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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2010–0020]

RIN 0584–AD85

Food Distribution Program on Indian Reservations: Administrative Funding Allocations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking establishes the requirements regarding the allocation of administrative funds for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, both of which are referred to as ''FDPIR'' in this rulemaking. The rulemaking amends FDPIR regulations to ensure that administrative funding is allocated in a fair and equitable manner. The final rule also revises FDPIR regulations to clarify current program requirements relative to the distribution of administrative funds to Indian Tribal Organizations (ITOs) and State agencies.

DATES: *Effective Date:* This rule is effective September 24, 2012.

FOR FURTHER INFORMATION CONTACT: Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866, ''Regulatory Planning and Review''

This final rule has been determined to be not significant for purposes of Executive Order 12866. Therefore it was not reviewed by the Office of Management and Budget (OMB).

B. Title 5, United States Code 601–612, ''Regulatory Flexibility Act''

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The administrator of the Food and Nutrition Service certified that this action will not have a significant impact on a substantial number of small entities. While ITOs and State agencies that administer FDPIR will be affected by this rulemaking, the economic effect will not be significant.

C. Public Law 104–4, ''Unfunded Mandates Reform Act of 1995'' (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of Sections 202 and 205 of the UMRA.

D. Executive Order 12372, ''Intergovernmental Review of Federal Programs''

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29115 on June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

E. Executive Order 13132, ''Federalism''

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

1. Prior Consultation With State and Local Officials

This rulemaking makes regulatory changes regarding the allocation of FDPIR administrative funds to the FNS Regional Offices for further allocation to the ITOs and State agencies that administer FDPIR. The programs that receive FDPIR administrative funding from FNS' Regional Offices are all Tribal or State-administered, federally-funded programs. On an ongoing basis, the FNS National and Regional Offices have formal and informal discussions related to FDPIR with Tribal and State officials. FNS meets regularly with the Board and the membership of the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR), an association of Tribal and State-appointed FDPIR Program Directors, to discuss issues relating to the program. Section F, *Tribal Impact Statement,* below, provides additional information on FNS' efforts to work directly with ITOs and State agencies in the development of the funding methodology specified in this rule.

2. Nature of Concerns and the Need To Issue This Rule

For many years, the FNS National Office used fixed percentages to allocate FDPIR administrative funds to each of the FNS Regional Offices, which in turn allocated the available funding to FDPIR ITOs and State agencies. However, this funding methodology did not account for any administrative cost drivers, such as the number of ITOs and State agencies within each Region or the number of individuals served by each ITO/State agency. ITOs and State agencies expressed concern that the methodology did not allocate funds equitably to the FNS Regional Offices, which negatively impacted the capacity

of certain agencies to adequately administer the program.

3. Extent to Which we Address Those Concerns

FNS has considered the impact of the final rule on FDPIR ITOs and State agencies. FNS does not expect the provisions of this rule to conflict with any State or local laws, regulations, or policies. The intent of this rule is to respond to the concerns of ITOs and State agencies by ensuring that funds are allocated to the FNS Regional Offices as fairly as possible; and to ensure that related program requirements with regard to the allocation of administrative funds to ITOs and State agencies, as well as ITO and State agency matching requirements, are clear and easy to understand.

F. Executive Order 13175, ''Tribal Impact Statement''

This rulemaking makes regulatory changes regarding the allocation of FDPIR administrative funds to the FNS Regional Offices, which further allocate the funds to the ITOs and State agencies that administer FDPIR. The changes are intended to ensure that FDPIR administrative funding is allocated to the FNS Regional Offices in a fair and equitable manner. The final rule also revises FDPIR regulations to clarify current program requirements relative to the allocation of administrative funds to ITOs and State agencies.

During the course of developing the proposed and final rules, FNS took numerous actions to ensure meaningful and timely input by elected Tribal leaders. In 2005, FNS convened a work group comprised of FNS staff and Tribal and State-appointed FDPIR Program Directors representing NAFDPIR and its membership. The work group was asked to develop a proposal(s) for a new funding methodology for the allocation of FDPIR federal administrative funds. The work group conducted its deliberations via 33 conference calls and six face-to-face meetings from May 2005 through October 2007. Discussions were also held at the annual meetings of the membership of NAFDPIR, in which some elected Tribal leaders took part. The work group and FNS solicited written comments from elected Tribal leaders and State officials at various stages of the development of the funding methodology. In addition to the requests for written comments, FNS hosted public meetings that were held in January 2007 at four locations throughout the country. Elected Tribal leaders and State officials were invited to discuss the proposal to develop a funding methodology at those public meetings. Discussion from the public meetings and written comments submitted to the work group were considered in presenting recommendations for a funding methodology to the FNS Administrator.

In fiscal year 2008, FNS implemented the funding methodology on a trial basis. FNS solicited comments from elected Tribal leaders and State officials on the impact of the funding methodology in fiscal year 2008 for consideration in determining the funding methodology to be used in fiscal year 2009, pending the development of proposed rulemaking.

A rule which proposed to formalize the funding methodology and clarify other related program requirements was published in the **Federal Register** (75 FR 54530) on September 8, 2010. The proposed rule referenced the written comments received on the pilot after implementation, and solicited further comments from elected Tribal leaders, State officials, and other interested members of the public. A summary of public comments received on the September 8, 2010 proposed rule and the agency's responses to comments received are discussed in section II of the preamble.

G. Executive Order 12988, ''Civil Justice Reform''

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Although the provisions of this rule are not expected to conflict with any State or local laws, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

H. Department Regulation 4300–4, ''Civil Rights Impact Analysis''

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods on the basis of an individual's or group's race, color, national origin, sex, age, political beliefs, religious creed, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

I. Title 44, United States Code, Chapter 35, ''Paperwork Reduction Act''

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This final rule does not contain any new information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act of 1995. However, previous burdens for 7 CFR part 253 information collections associated with this rule have been approved under OMB control number 0584–0293.

J. Public Law 107–347, ''E-Government Act Compliance''

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background and Discussion of the Final Rule

A. Prior Administrative Funding Allocation Methodology

Prior to this final rulemaking, FDPIR regulations at 7 CFR part 253 did not specify a methodology for the allocation of administrative funds. Under the traditional practice, the FNS National Office allocated funds to the FNS Regional Offices using fixed percentages. These funding percentages varied from one Region to the next, did not change for many years prior to fiscal year 2008, and did not reflect cost drivers such as each Region's share of national program participation and current number of ITOs and State agencies. Regional Offices then allocated to each ITO or State agency its share of administrative funds based on negotiations with such entity. Because FNS Regional Offices received funding without regard to the effect of cost drivers, similar ITOs and State agencies in different Regions could have received significantly different funding levels. Consequently, this method of allocating funds had the potential to negatively impact program operations and result in

inconsistent or uneven service to participants.

B. FDPIR Funding Methodology Work Group and Pilot

To address concerns raised by FDPIR ITOs and State agencies over potential FDPIR administrative funding inequities, a funding methodology work group was convened by FNS in 2005. The work group, which was comprised of FDPIR program representatives, including NAFDPIR officers, and FNS staff, was charged with developing a new methodology for the distribution of FDPIR administrative funds that would be fair, objective, and easy to understand.

Based on the work group's proposals, FNS developed an administrative funding allocation methodology which was initially implemented on a pilot basis in fiscal year 2008, and has continued as a pilot up to the present time. This funding methodology allocates funds to the Regional Offices based on two weighted components: Each Region's share of the total number of participants nationally, and each Region's share of the total current number of ITOs and State agencies administering the program nationally. Proportionally more weight was given to the first element, program participation, since FNS believes this to be the major cost driver in the administration of FDPIR. By using these two factors, FNS intended to design a funding methodology that would provide each FNS Regional Office with adequate funding to support the operational costs of all of its programs, including both larger programs with high participation and smaller programs with certain basic administrative costs.

FNS sought comments regarding the impact of the piloted methodology on the program. The comments received were considered in the development of the proposed rule. Further details on the proceedings of the work group in developing proposals for a funding methodology and the implementation of the pilot may be found in the preamble of the proposed rule.

C. Proposed Rule and Analysis of Comments Received

In a proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54530), FNS proposed to include in 7 CFR part 253 the administrative funding methodology that was implemented on a pilot basis, and that was based on the work group proposal. In accordance with that methodology, sixty-five percent of all administrative funds available nationally are allocated to FNS Regional Offices in proportion to their share of the number of participants nationally, averaged over the three previous fiscal years. FNS believes program participation to be the major cost driver. However, in order to recognize the fixed costs common to programs of all participation levels, the remaining 35 percent of all administrative funds available nationally are allocated to each FNS Regional Office in proportion to its share of the total current number of ITOs and State agencies administering the program nationally. By using these two factors, FNS intended to design a funding methodology that would provide each FNS Regional Office with the funding to support the operational costs of all of its programs, both large and small.

Comments were solicited through December 7, 2010, on the provisions of the proposed rulemaking. These comments are discussed below and are available for review at *www.regulations.gov.* To view the comments received, select ''Public Submissions'' from the dropdown menu entitled ''Select Document Type,'' and enter ''FNS–2010–0020'' in the box under ''Enter Keyword or ID.'' Then click on ''Search.''

FNS received written comments from two elected Tribal leaders, five FDPIR program administrators, one Tribal nutrition services administrator, and one private citizen regarding the proposed funding methodology. Six commenters supported the funding allocation methodology, while three commenters opposed it. Of the six commenters supporting the methodology, five specifically cited support for the funding allocation factors proposed, i.e., each Region's proportionate share of national program participation and number of programs. Four of the six commenters cited equity or fairness as another factor in their support of the methodology. Four of the six commenters also specified that the funding methodology is simple, straightforward, and easy to understand. Three supporting commenters cited the fact that the piloted and proposed provisions, in conjunction with increased funding from Congress, provided the resources needed for their programs. Finally three commenters expressed support for the consultation process prior to pilot implementation.

One commenter stated three key objections to the proposed funding methodology: (1) FNS did not consult with the Tribes and State agencies; (2) the funding methodology represents a ''one-size fits all'' approach that does not recognize each Tribe as a government with unique needs; and (3) the funding methodology is more beneficial to Tribes with greater participation rates, and minimizes services to Tribes with lower participation rates. Regarding the third objection, the commenter further stated that small Tribes should be considered for supplemental funding.

FNS consulted with elected Tribal leaders and State officials on multiple occasions prior to piloting the funding allocation methodology, as outlined in the proposed rule. The decision to pilot the methodology was made in response to the Congressional expectation that FNS address funding inequities with the additional funds provided in fiscal year 2008. In addition to meeting the intent of Congress, the pilot permitted FNS to continue consultations with elected Tribal leaders and State officials. While we acknowledge that there are varying perspectives regarding what constitutes consultation, we believe that there was adequate consultation.

Regarding the commenter's objections in reference to the funding methodology's ''one-size-fits-all'' approach, and its failure to meet the needs of smaller programs, each FNS Regional Office continues to negotiate budgets directly with each FDPIR ITO and State agency, once the funds are allocated to the Regions. This permits each FNS Regional Office the flexibility to meet the special needs of each ITO and State agency within its share of the total administrative funds available, including smaller ITOs.

In reference to the commenter's objection that the funding methodology is more beneficial to Tribes with greater participation rates, FNS believes that program participation is the major cost driver. However, FNS also recognizes that there are fixed costs common to programs of all participation levels. For that reason, the funding methodology provides 35 percent of all administrative funds available nationally to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally. The establishment of this second factor in allocation offers a proper balance by providing each FNS Regional Office with funding to support the operational costs of all programs, regardless of participation levels.

Another commenter objected to the use of program participation as a factor in the funding methodology, stating that the factor is flawed because increased Supplemental Nutrition Assistance Program (SNAP) benefits led to a decline in FDPIR participation. However, while FDPIR did experience a decline in participation, the decline did not have a disproportionate negative

impact in a specific Region, nor did it affect the total administrative funding available to the program. On the contrary, such funding increased after fiscal year 2008.

One commenter stated that the proposed funding methodology will not work without: (1) Increasing the FDPIR income limit and changing the standard earned income deduction, (2) increasing the resource limits for the program, (3) providing more food, including fresh produce, in FDPIR, and (4) making all Social Security recipients categorically eligible for FDPIR. However, these changes would, for the most part, impact program eligibility and benefits, and would not affect the methodology of allocating administrative funds, which is the subject of this rule. In a proposed rule published in the **Federal Register** on January 11, 2012 (77 FR 1642), FNS proposed to eliminate the requirement that household resources be considered in determining program eligibility, and proposed to include additional income deductions. These changes, if implemented, would simplify program administration, and make it easier for applicants to qualify for program benefits.

Another commenter stated that the higher incidence of Native American health conditions (e.g., diabetes, obesity, heart conditions) should be the impetus that drives funding in FDPIR. FNS recognizes the need to contribute positively to the health of participants in all of its nutrition assistance programs, including FDPIR. Since 2008, FNS has made $1 million available on an annual basis for FDPIR nutrition education, with the goal of enhancing the nutrition knowledge of FDPIR participants and fostering positive lifestyle changes. These funds are allocated separately from program administrative funds.

D. Regulatory Revisions, 7 CFR 253.11

For the purposes of this rule, FDPIR State agencies include both ITOs and agencies of state government. In 7 CFR 253.11 of the proposed rule, we proposed to remove paragraph (a) and redesignate paragraphs (b) through (h), and to include, in new paragraphs (a), (b), and (c):

(1) The methodology for allocating administrative funds to FNS Regional Offices, as described above, which has been implemented on a pilot basis;

(2) Clarification of the requirement for State agencies to submit budgets to FNS Regional Offices, and subsequent allocation to State agencies of funds required to meet 75 percent of approved administrative costs; and

(3) Clarification of the requirement for State agencies to match administrative funds allocated to them by covering 25 percent of approved administrative costs, unless a waiver is submitted and approved to reduce the matching requirement.

1. Funding Methodology

In 7 CFR 253.11(a) of the proposed rule, we proposed to allocate administrative funds to the FNS Regional Offices, to the extent practicable, in the following manner: Sixty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and thirty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

As an outcome of the pilot implementation, FNS identified the need to include regulatory language to ensure that funding is available to support participation of new State agencies for which prior participation data is not available, and that would permit FNS some limited flexibility to meet individual State agency administrative funding needs not reflected under the two weighted factors. Consequently, we proposed to allocate funds to FNS Regional Offices, in accordance with the funding methodology described above, ''to the extent practicable * * *.'' Based on the comments discussed above, most of which were in support of the proposals, the proposed funding methodology is included without change in 7 CFR 253.11(a) of this final rule.

2. State Agency Budget Submissions and Allocations

In 7 CFR 253.11(b) of the proposed rule, we proposed to include the requirement, in current 7 CFR 253.11(b), that State agencies submit annual budgets to FNS for approval, and that only administrative costs that are allowable under 7 CFR part 277 may be included. We proposed to clarify that the budget request must be sent to the FNS Regional Office for approval, which is consistent with directives in FNS Instruction 700–1, Rev. 2. Finally, we proposed to include the provision in current 7 CFR 253.11(a) which specifies that, within funding limitations, FNS provides State agencies with administrative funds necessary to meet 75 percent of approved administrative costs, with the clarification that FNS Regional Offices provide the administrative funds to State agencies. No comments were received on these proposed provisions. Thus, the proposed changes are retained in 7 CFR 253.11(b) of this final rule.

3. State Agency Matching Requirement

In 7 CFR 253.11(c) of the proposed rule, we proposed to set forth the State agency matching requirements. In 7 CFR 253.11(c)(1), we proposed to indicate that the State agency must contribute 25 percent of approved administrative costs, and that both cash and non-cash contributions may be used to meet the matching requirement. This is currently required via FNS Instruction 716–4, Rev. 1. For the sake of clarity, we proposed to include in paragraph (c)(1) the criteria for allowable cash and non-cash contributions, similar to what is currently provided in 7 CFR part 277. No comments were received on these proposed provisions. Thus, the proposed changes are retained in 7 CFR 253.11(c)(1) of this final rule. We have also added the provision, in current 7 CFR 253.11(b), that the value of services rendered by volunteers may be used to meet the matching requirement.

In 7 CFR 253.11(c)(2), we proposed to permit the State agency to request a waiver to reduce the matching requirement to less than 25 percent of approved administrative costs. In essence, this clarifies the provision, in current 7 CFR 253.11(a), regarding requests for payment of Federal funds in excess of 75 percent of administrative costs. We proposed to retain the requirement that the State agency provide compelling justification for meeting less than the 25 percent match and receiving additional administrative funds. Furthermore, we proposed to add a provision which gives the FNS Regional Office the discretion to provide additional administrative funds beyond 75 percent. This is consistent with current program practice. No comments were received on these proposed provisions. Thus, the proposed changes are retained in 7 CFR 253.11(c) of this final rule.

4. Allowable Costs

In this final rule, we are redesignating current 7 CFR 253.11(c) through (h) as 7 CFR 253.11(e) through (j), in order to include a new paragraph (d) to clarify requirements in current 7 CFR 253.11(b) regarding allowable costs in the use of administrative funds. Such costs must be used only for costs that are allowable under 7 CFR part 277, and that are incurred in operating FDPIR, and may not be used to pay costs that are, or may

be, paid with funds provided from other Federal sources.

We also proposed to revise the heading of 7 CFR 253.11 to ''Administrative funds'' to more clearly describe the provisions in the section, as proposed. As we did not receive any comments relating to this proposal, this final rule revises the section heading as proposed.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

■ 1. The authority citation for 7 CFR part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

■ 2. In § 253.11:
■ a. Revise the section heading;
■ b. Remove paragraphs (a) and (b);
■ c. Redesignate paragraphs (c) through (h) as paragraphs (e) through (j); and
■ d. Add new paragraphs (a) through (d).

The revisions and additions read as follows:

§ 253.11 Administrative funds.

(a) *Allocation of administrative funds to FNS Regional Offices.* Each fiscal year, after enactment of a program appropriation for the full fiscal year and apportionment of funds by the Office of Management and Budget, administrative funds will be allocated to each FNS Regional Office for further allocation to State agencies. To the extent practicable, administrative funds will be allocated to FNS Regional Offices in the following manner:

(1) 65 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and

(2) 35 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

(b) *Allocation of administrative funds to State agencies.* Prior to receiving administrative funds, State agencies must submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. Planned administrative costs must be allowable under part 277 of this chapter. To the extent that funding levels permit, the FNS Regional Office allocates to each State agency administrative funds necessary to cover 75 percent of approved administrative costs.

(c) *State agency matching requirement.* State agencies must match administrative funds allocated to them as follows:

(1) Unless Federal administrative funding is approved at a rate higher than 75 percent of approved administrative costs, in accordance with paragraph (c)(2) of this section, each State agency must contribute 25 percent of its total approved administrative costs. Cash or non-cash contributions, including third party in-kind contributions, and the value of services rendered by volunteers, may be used to meet the State agency matching requirement. In accordance with part 277 of this chapter, such contributions must:

(i) Be verifiable;

(ii) Not be contributed for another federally-assisted program, unless authorized by Federal legislation;

(iii) Be necessary and reasonable to accomplish program objectives;

(iv) Be allowable under Part 277 of this chapter;

(v) Not be paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(vi) Be included in the approved budget.

(2) The State agency may request a waiver to reduce its matching requirement below 25 percent of approved administrative costs. In its proposed budget, the State agency must submit compelling justification to the appropriate FNS Regional Office that it is unable to meet the 25 percent matching requirement and that additional administrative funds are necessary for the effective operation of the program. The FNS Regional Office may, at its discretion, approve a reduction of the matching requirement and provide additional administrative funds to cover more than 75 percent of approved administrative costs to a State agency that provides compelling justification. In its compelling justification submission, the State agency must include a summary statement and recent financial documents, in accordance with FNS instructions. Compelling justification may include but is not limited to:

(i) The need for additional administrative funding for startup costs during the first year of program operation; or

(ii) The need to prevent a reduction in the level of necessary and reasonable program services provided.

(d) *Use of funds by State agencies.* Any funds received under this section shall be used only for costs that are allowable under part 277 of this chapter, and that are incurred in operating the food distribution program. Such funds may not be used to pay costs that are, or may be, paid with funds provided from other Federal sources.

* * * * *

Dated: August 13, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–20377 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0842; Amendment No. 71–44

RIN 2120–AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9W, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: These regulations are effective September 15, 2012, through September 15, 2013. The incorporation by reference of FAA Order 7400.9W is approved by the Director of the Federal Register as of September 15, 2012, through September 15, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9V, Airspace Designations and Reporting Points, effective September 15, 2011, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 15, 2011, through September 15, 2012. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9V in full text as proposed rule documents in the Federal Register. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9W, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9W in section 71.1, as of September 15, 2012, through September 15, 2013. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9W.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9W, effective September 15, 2012, through September 15, 2013. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9W in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9W is effective September 15, 2012, through September 15, 2013. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9W may be obtained from Airspace, Regulations and ATC Procedures Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA Web site at *http://www.faa.gov/air_traffic/publications.* Copies of FAA Order 7400.9W may be inspected in Docket No. FAA–2012–0842; Amendment No. 71–44 on *http://www.regulations.gov.* A copy of AFF Order 7400.9W may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words ''FAA Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words ''FAA

Order 7400.9V'' and adding, in their place, the words ''FAA Order 7400.9W.''

Issued in Washington, DC, on August 15, 2012.

Alan Wilkes,

Acting Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2012–20660 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30859; Amdt. No. 502]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, September 20, 2012.

FOR FURTHER INFORMATION CONTACT: Rick Dunham, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on August 17, 2012.

John M. Allen,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 26, 2012.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 502 effective date September 20, 2012]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3310 RNAV Route T310 Is Amended To Read in Part			
Tucson, AZ VORTAC **9200—MCA Sulli, AZ FIX, E BND *7200—MOCA	**Sulli, AZ FIX	*8000	17500

From	To	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6001 VOR Federal Airway V1 Is Amended To Read in Part		
Hartford, CT VOR/DME	Dvany, CT FIX	3000
Dvany, CT FIX *2500—MOCA	Graym, MA FIX	*4000

From	To	MEA
§ 95.6003 VOR Federal Airway V3 Is Amended To Read in Part		
Palm Beach, FL VORTAC *2100—MOCA	Treasure, FL VORTAC	*3000
Treasure, FL VORTAC	Melbourne, FL VOR/DME	2000
§ 95.6004 VOR Federal Airway V4 Is Amended to Read in Part		
Louisville, KY VORTAC	Lexington, KY VORTAC	2800
§ 95.6010 VOR Federal Airway V10 Is Amended To Read in Part		
Emporia, KS VORTAC *2600—MOCA *3000—GNSS MEA	Wetzl, KS FIX	*5000
Wetzl, KS FIX	Napoleon, MO VORTAC	3100
§ 95.6012 VOR Federal Airway V12 Is Amended To Read in Part		
Emporia, KS VORTAC *2600—MOCA *3000—GNSS MEA	Wetzl, KS FIX	*5000
Wetzl, KS FIX	Napoleon, MO VORTAC	3100
§ 95.6026 VOR Federal Airway V26 Is Amended To Read in Part		
Cherokee, WY VOR/DME	Alcos, WY FIX	11700
Alcos, WY FIX *9400—MOCA	Muddy Mountain, WY VOR/DME	*10000
§ 95.6027 VOR Federal Airway V27 Is Amended To Read in Part		
Fortuna, CA VORTAC	Crescent City, CA VORTAC	3000
§ 95.6035 VOR Federal Airway V35 Is Amended To Read in Part		
Holston Mountain, TN VORTAC	Glade Spring, VA VOR/DME	6700
§ 95.6037 VOR Federal Airway V37 Is Amended To Read in Part		
Clarksburg, WV VOR/DME *3400—MOCA	Tedds, WV FIX	*4000
Tedds, WV FIX *3400—MOCA *4000—GNSS MEA	Cetpu, PA FIX	*5000
Cetpu, PA FIX *3200—MOCA	Ellwood City, PA VORTAC	*4000
§ 95.6051 VOR Federal Airway V51 Is Amended To Read in Part		
*Sheds, FL FIX *3000—MRA **1400—MOCA	Treasure, FL VORTAC	**2000
Treasure, FL VORTAC *2800—MOCA	Ovido, FL FIX	*4000
§ 95.6053 VOR Federal Airway V53 Is Amended To Read in Part		
Lexington, KY VORTAC	Louisville, KY VORTAC	2800
§ 95.6054 VOR Federal Airway V54 Is Amended To Read in Part		
Fayetteville, NC VOR/DME *1900—MOCA	Kinston, NC VORTAC	*2000
§ 95.6066 VOR Federal Airway V66 Is Amended To Read in Part		
Anima, NM FIX	Darce, NM FIX	9000
§ 95.6068 VOR Federal Airway V68 Is Amended To Read in Part		
Chisum, NM VORTAC	Hager, NM FIX	6000
§ 95.6070 VOR Federal Airway V70 Is Amended To Read in Part		
Wilmington, NC VORTAC	Beula, NC FIX	*8000

From	To	MEA
*1600—MOCA *2000—GNSS MEA		
§ 95.6094 VOR Federal Airway V94 Is Amended To Read in Part		
Blythe, CA VORTAC *9000—MRA	*Vicko, AZ FIX	6000
§ 95.6114 VOR Federal Airway V114 Is Amended To Read in Part		
Gregg County, TX VORTAC *1900—MOCA	Carth, TX FIX	*2300
Covex, LA FIX *1900—MOCA	Nuboy, LA FIX	*5000
Nuboy, LA FIX	Alexandria, LA VORTAC	
	W BND	5000
	E BND	2000
§ 95.6121 VOR Federal Airway V121 Is Amended To Read in Part		
Roseburg, OR VOR/DME	North Bend, OR VORTAC	5300
§ 95.6133 VOR Federal Airway V133 Is Amended To Read in Part		
*Traverse City, MI VORTAC	Escanaba, MI VOR/DME	5000
*Traverse City R–301—R–002	Unusable BYD 10 NM BLO	5000
§ 95.6144 VOR Federal Airway V144 Is Amended To Read in Part		
Fort Wayne, IN VORTAC *3000—MOCA	Buzzi, OH FIX	*6000
§ 95.6152 VOR Federal Airway V152 Is Amended To Read in Part		
Kizer, FL FIX *2800—MOCA	Ormond Beach, FL VORTAC	
	NE BND	*3600
	SW BND	*5000
§ 95.6157 VOR Federal Airway V157 Is Amended To Read in Part		
Fayetteville, NC VOR/DME *1900—MOCA	Kinston, NC VORTAC	*2000
§ 95.6159 VOR Federal Airway V159 Is Amended To Read in Part		
Jupem, FL FIX	Treasure, FL VORTAC	2600
Treasure, FL VORTAC *2500—MRA	*Presk, FL FIX	3000
Walnut Ridge, AR VORTAC *3000—MOCA	Dogwood, MO VORTAC	*3400
§ 95.6184 VOR Federal Airway V184 Is Amended To Read in Part		
Atlantic City, NJ VORTAC	Panze, NJ FIX	2100
§ 95.6190 VOR Federal Airway V190 Is Amended To Read in Part		
Marion, IL VOR/DME *2000—MOCA *2300—GNSS MEA	Pocket City, IN VORTAC	*5000
§ 95.6193 VOR Federal Airway V193 Is Amended To Read in Part		
White Cloud, MI VOR/DME	Traverse City, MI VORTAC	*4000
*Traverse City R–188—R–207	Unusable BYD 10 NM BLO	4000
§ 95.6203 VOR Federal Airway V203 Is Amended To Read in Part		
Dinny, NY FIX	Saranac Lake, NY VOR/DME	7000
**Saranac Lake, NY VOR/DME *5100—MOCA *6000—GNSS MEA **Massena R–159 Unusable, Use Saranac Lake R–339	**Massena, NY VORTAC	*10000

From	To	MEA
§ 95.6213 VOR Federal Airway V213 Is Amended To Read in Part		
Wilmington, NC VORTAC	Wallo, NC FIX	*8000
*1600—MOCA		
*5000—GNSS MEA		
Wallo, NC FIX	Josch, NC FIX	
*1700—MOCA	S BND	*8000
*2000—GNSS MEA	N BND	*6000
Josch, NC FIX	Ester, NC FIX	
*1700—MOCA	S BND	*6000
*2000—GNSS MEA	N BND	*3000
§ 95.6225 VOR Federal Airway V225 Is Amended To Read in Part		
Diddy, FL FIX	Treasure, FL VORTAC	2000
§ 95.6229 VOR Federal Airway V229 Is Amended To Read in Part		
Atlantic City, NJ VORTAC	Panze, NJ FIX	2100
Hartford, CT VOR/DME	Gardner, MA VOR/DME	3000
§ 95.6232 VOR Federal Airway V232 Is Amended To Read in Part		
Keating, PA VORTAC	Watso, PA FIX	4700
Watso, PA FIX	Milton, PA VORTAC	*4000
*2900—MOCA		
Milton, PA VORTAC	Solberg, NJ VOR/DME	4000
Solberg, NJ VOR/DME	Tykes, NJ FIX	2300
Tykes, NJ FIX	Colts Neck, NJ VOR/DME	2000
§ 95.6265 VOR Federal Airway V265 Is Amended To Read in Part		
Jamestown, NY VOR/DME	*Dunkirk, NY VORTAC	4000
*3400—MCA Dunkirk, NY VORTAC, S BND		
Dunkirk, NY VORTAC	U.S. Canadian Border	*3400
*2000—MOCA		
§ 95.6285 VOR Federal Airway V285 Is Amended To Read in Part		
Manistee, MI VOR/DME	*Traverse City, MI VORTAC	*2800
*Traverse City R–228—R260	Unusable BYD 10 NM BLO	4000
§ 95.6295 VOR Federal Airway V295 Is Amended To Read in Part		
Stoop, FL FIX	Treasure, FL VORTAC	2000
Treasure, FL VORTAC	Orlando, FL VORTAC	*2600
*1600—MOCA		
§ 95.6320 VOR Federal Airway V320 Is Amended To Read in Part		
*Traverse City, MI VORTAC	Mount Pleasant, MI VOR/DME	*5000
*Traverse City R–077—R–187	Unusable BYD 10 NM BLO	5000
§ 95.6370 VOR Federal Airway V370 Is Amended To Read in Part		
Bands, CA FIX	*Palm Springs, CA VORTAC	13000
*11800—MCA Palm Springs, CA VORTAC, W BND		
*6200—MCA Palm Springs, CA VORTAC, N BND		
§ 95.6402 VOR Federal Airway V402 Is Amended To Read in Part		
Tucumcari, NM VORTAC	Moser, TX FIX	6300
Moser, TX FIX	Panhandle, TX VORTAC	*6000
*5500—MOCA		
§ 95.6418 VOR Federal Airway V418 Is Amended To Read in Part		
Salem, MI VORTAC	Bewel, OH FIX	#*4000
*2700—MOCA		
#For That Airspace Over U.S. Territory.		
§ 95.6420 VOR Federal Airway V420 Is Amended To Read in Part		
Green Bay, WI VORTAC	*Traverse City, MI VORTAC	3500
*Traverse City R–261—R–300	Unusable BYD 10 NM BLO	3500

From	To	MEA
§ 95.6429 VOR Federal Airway V429 Is Amended To Read in Part		
Marion, IL VOR/DME *2100—MOCA *2300—GNSS MEA	Bible Grove, IL VORTAC	*5000
§ 95.6437 VOR Federal Airway V437 Is Amended To Read in Part		
Melbourne, FL VOR/DME *1600—MOCA	Awiny, FL FIX	*3000
Awiny, FL FIX	Ovido, FL FIX	
	NW BND	5000
	SE BND	3000
Ovido, FL FIX *2800—MOCA	Kizer, FL FIX	*5000
Kizer, FL FIX *2800—MOCA	Ormond Beach, FL VORTAC SW BND	*5000
	NE BND	*3600
§ 95.6508 VOR Federal Airway V508 Is Amended To Delete		
Rugbb, KS FIX	Johnson County, KS VOR/DME	2600
§ 95.6537 VOR Federal Airway V537 Is Amended To Read in Part		
Stoop, FL FIX	Treasure, FL VORTAC	2000
Treasure, FL VORTAC *2500—MRA	*Presk, FL FIX	3000
§ 95.6566 VOR Federal Airway V566 Is Amended To Read in Part		
Knelt, LA FIX *1800—MOCA	Covex, LA FIX	*3500
Covex, LA FIX *1900—MOCA	Nuboy, LA FIX	*5000
Nuboy, LA FIX	Alexandria, LA VORTAC	
	W BND	5000
	E BND	2000
§ 95.6589 VOR Federal Airway V589 Is Amended To Read in Part		
Medicine Bow, WY VOR/DME	Alcos, WY FIX	10100
Alcos, WY FIX *9400—MOCA	Muddy Mountain, WY VOR/DME	*10000
§ 95.6438 Alaska VOR Federal Airway V438 Is Amended To Read in Part		
Big Lake, AK VORTAC *10000—MRA	*Sures, AK FIX	7500
Sures, AK FIX **8900—MOCA #MEA is established with a gap in navigation signal coverage.	Liber, AK FIX	#**10000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7045 Jet Route J45 Is Amended To Read in Part			
Virginia Key, FL VOR/DME	Treasure, FL VORTAC	18000	45000
Treasure, FL VORTAC	Ormond Beach, FL VORTAC	18000	45000
§ 95.7075 Jet Route J75 Is Amended To Read in Part			
*Carmel, NY VOR/DME *Radar required between Carmel and Nelie	*Nelie, CT FIX	18000	45000
Nelie, CT FIX	Boston, MA VOR/DME	18000	45000
§ 95.7079 Jet Route J79 Is Amended To Read in Part			
Palm Beach, FL VORTAC	Treasure, FL VORTAC	18000	45000
Treasure, FL VORTAC	Ormond Beach, FL VORTAC	18000	45000

Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V10 Is Amended To Delete Changeover Point			
Emporia, KS VORTAC	Johnson County, KS VOR/DME	49	Emporia
V12 Is Amended To Delete Changeover Point			
Emporia, KS VORTAC	Johnson County, KS VOR/DME	49	Emporia
V159 Is Amended To Delete Changeover Point			
Treasure, FL VORTAC	Orlando, FL VORTAC	32	Treasure
V203 Is Amended To Delete Changeover Point			
Saranac Lake, NY VOR/DME	Massena, NY VORTAC	11	Saranac Lake
V26 Is Amended To Add Changeover Point			
Montrose, CO VOR/DME	Grand Junction, CO VOR/DME	23	Montrose
V27 Is Amended To Delete Changeover Point			
Fortuna, CA VORTAC	Crescent City, CA VORTAC	30	Fortuna
V285 Is Amended To Add Changeover Point			
Manistee, MI VOR/DME	Traverse City, MI VORTAC	29	Manistee

[FR Doc. 2012–20812 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2011–0348]

RIN 1625–AA01

Anchorage; Change to Cottonwood Island Anchorage, Columbia River, Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the existing Cottonwood Island anchorage and establishing a new designated anchorage. The change is necessary to ensure that there are sufficient anchorage grounds on the Columbia River.

DATES: This rule is effective September 24, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0348 and are available online by going to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder associated with this rulemaking. You may also visit the Docket Management Facility in room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email ENS Ian McPhillips, Waterways Management Division, Coast Guard MSU Portland; telephone 503–240–9319, email *msupdxwwm@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On June 13, 2011, the Coast Guard published an NPRM proposing to increase the size of the Cottonwood Island Anchorage on the Columbia River (76 FR 34197). On May 23, 2012, the Coast Guard published a Supplemental NPRM revising that proposal in response to public comments (77 FR 30440). During the 30-day comment period on the Supplemental NPRM, the Coast Guard received eight comments on the proposed action. Seven of the comments were from various maritime stakeholders in the Lower Columbia River Basin and one of the comments was from the Mayor of the City of Prescott.

B. Basis and Purpose

The Secretary of Homeland Security has delegated to the Coast Guard the authority to establish and regulate anchorage grounds in accordance with 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1. As currently established, the Coast Guard Captain of the Port Columbia River believes the size of the Cottonwood Island Anchorage is insufficient based on both the current demand for anchorage grounds and the forecasted growth of vessel traffic on the Columbia River. Sufficient anchorage area, both in number and size, is especially important in this area because of the unpredictable hazardous conditions of the Columbia River Bar, which at times prevents vessels from safely navigating downriver. This rule increases the size of the current Cottonwood Island Anchorage and creates a new anchorage on the Columbia River.

C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard received eight comments during the 30-day comment period on the Supplemental NPRM.

Seven of the comments received were from maritime industry stakeholders in support of the action. The eighth comment, submitted on behalf of the City of Prescott, stated that the city was satisfied with the regulatory action. That comment also referenced emergency anchoring situations in areas outside the anchorages established by this rule. This rule does not affect waters not designated as anchorages and, consequently, the ability of vessels to anchor in these areas outside the channel remains as it was before this rulemaking. Likewise, the Captain of the Port continues to possess the same authority to direct vessels to anchor under 33 CFR 160.111(c). However, the Coast Guard believes that the City's concerns over noise, vessel exhaust, and visual impact in emergency anchoring situations will be addressed by anchoring standards of care being developed in the Lower Columbia River Region Harbor Safety Plan and applied by the Columbia River Pilots under 33 CFR 110.228(b)(3).

After considering all comments submitted, the Coast Guard made no changes to the rule proposed in the Supplemental NPRM.

D. Regulatory Analyses

The Coast Guard developed this rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. Modifying the existing anchorage and establishing a new anchorage area will not have any significant costs or impacts on maritime activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612, as amended) requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels operating in and around the anchorage areas established by this rule and the City of Prescott. This rule will not have a significant economic impact on vessel owners and operators because the anchorage area is outside the channel and will not, therefore, affect vessel traffic patterns. This rule will not have a significant economic impact on the City of Prescott because the anchorages established by the rule are upriver and downriver of the city limits and because vessels anchoring at the anchorage will have little or no economic activity with the City of Prescott or its residents.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction. This rule involves the extension of one anchorage and the establishment of another. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.228 by revising paragraph (a)(10) and adding paragraph (a)(11) to read as follows:

§ 110.228 Columbia River, Oregon and Washington.

(a) * * *

(10) *Cottonwood Island Anchorage.* The waters of the Columbia River bounded by a line connecting the following points:

Latitude	Longitude
46°05′56.88″ N	122°56′53.19″ W
46°05′14.06″ N	122°54′45.71″ W
46°04′57.12″ N	122°54′12.41″ W
46°04′37.55″ N	122°53′45.80″ W
46°04′13.72″ N	122°53′23.66″ W
46°03′54.94″ N	122°53′11.81″ W
46°03′34.96″ N	122°53′03.17″ W
46°03′11.61″ N	122°52′56.29″ W
46°03′10.94″ N	122°53′10.55″ W
46°03′32.06″ N	122°53′19.69″ W
46°03′50.84″ N	122°53′27.81″ W
46°04′08.10″ N	122°53′38.70″ W
46°04′29.41″ N	122°53′58.17″ W
46°04′49.89″ N	122°54′21.57″ W
46°05′06.95″ N	122°54′50.65″ W
46°05′49.77″ N	122°56′58.12″ W

(11) *Prescott Anchorage.* The waters of the Columbia River bounded by a line connecting the following points:

Latitude	Longitude
46°02′47.01″ N	122°52′53.90″ W
46°02′26.32″ N	122°52′51.89″ W
46°02′25.92″ N	122°53′00.38″ W
46°02′46.54″ N	122°53′03.87″ W

* * * * *

Dated: August 1, 2012.

K.A. Taylor,

Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2012–20345 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0767]

RIN 1625–AA00

Safety Zone; Boston Harbor's Rock Removal Project, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within Sector Boston's Captain of the Port (COTP) Zone for the drilling, blasting, and dredging operation on the navigable waters of Boston Inner Harbor, in the main ship channel near Castle Island. This temporary safety zone is necessary to enhance navigation, vessel safety, marine environmental protection, and provide for the safety of life on the navigable waters during the drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers rock removal project. Entering into, transiting through, mooring or anchoring within this safety zone is prohibited unless authorized by the COTP or the designated on-scene representative.

DATES: This rule is effective in the CFR on August 23, 2012, until September 30, 2012, and will be enforced daily from 5 a.m. to 8 p.m. This rule is effective with actual notice for purposes of enforcement beginning on August 13, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0767. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' Box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.* If you have

questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because critical information regarding the scope of the event was not received from the U.S. Army Corps of Engineers until July 15, 2012, providing insufficient time for the Coast Guard to solicit public comments before the start date of the project. The U.S. Army Corps of Engineers also discussed the rock removal project at the Boston's Port Operators Group monthly meeting on July 15, 2012. The Coast Guard hosted a meeting on August 2, 2012 inviting stakeholders from the maritime industry in Boston Harbor to discuss and mitigate any impacts this project will have on maritime community. The feedback from the meeting was that this safety zone will have minimum impact on local mariners based on the location and the fact that the majority of boating traffic will be able to transit around the safety zone and that the vessels involved in the rock removal operations will move as needed for deep draft vessels. A delay or cancellation of the project in order to accommodate a notice and comment period would be contrary to the public interest because immediate action is necessary to ensure the safety of the personnel involved in the rock removal project and any public vessels in the vicinity of the drilling, dredging and blasting operations being conducted. For the safety concerns noted, it is in the public interest to have these regulations in effect during the rock removal project.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose personnel involved in the rock removal project and any public vessels in the vicinity to hazards associated with the drilling, dredging and blasting operations.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

The safety zone is being issued to provide for the safety of life on the navigable waters during the drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers rock removal project.

C. Discussion of Final Rule

Starting August 13, 2012, daily from 5 a.m. to 8 p.m. until September 30, 2012, the contractor Burnham Associates Inc. will be conducting drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers Boston Harbors main ship channel rock removal project.

The COTP Boston has determined that hazards associated with the drilling, dredging and blasting operations pose a significant risk to safety of life on navigable waters. Establishing a safety zone around the vessel conducting the drilling, blasting, and dredging will help ensure the safety of the personnel involved in the rock removal project and any public vessels in the vicinity, and help minimize the associated risks with this project. This safety zone will establish a 100-yard radius around the vessel conducting the drilling, blasting and dredging operations in various locations in Boston Harbor's main ship channel near Castle Island. To ensure public safety, the safety zone will be enforced only while the vessel is on scene conducting operations involved in the rock removal project in Boston Harbor's main ship near Castle Island.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: The Coast Guard expects minimal adverse impact to mariners from the activation of the zone; vessels have sufficient room to transit around the safety zone; the vessel conducting the operations will move out of the channel for deep draft vessels that need to pass through that area and vessels may enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative; and notification of the safety zone will be made to mariners through the local Notice to Mariners, Broadcast Notice to Mariners in advance of the event.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended requires federal agencies to consider the potential impact of regulations on small entitles during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities for the following reasons: vessels have sufficient room to transit around the safety zone; the vessel conducting the operations will move out of the channel for deep draft vessels that need to pass through that area and vessels may enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative; notification of the safety zone will be made to mariners through the Local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''Significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0767 to read as follows:

§ 165.T01–0767 Safety Zone; Boston Harbor's Rock Removal Project, Boston Inner Harbor, Boston, MA.

(a) *General.* A temporary safety zone is established for the Boston Harbor's Rock Removal Project as follows:

(1) *Location.* All navigable waters from surface to bottom, within a 100-yard radius around the vessel or vessels conducting drilling, blasting, dredging, and other related operations related to rock removal in Boston's Inner Harbor near Castle Island.

(2) *Definitions.* For the purposes of this section, ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel. An ''Official Patrol Vessel'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP or the designated on-scene representative may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) *Enforcement period.* This rule will be effective from August 13, 2012 until September 30, 2012 and will be enforced daily from 5 a.m. to 8 p.m.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for participating or public vessels, will be allowed to enter into, transit through, or anchor within the safety zone without the

permission of the COTP or the designated on-scene representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

Dated: August 13, 2012.

J.C. O'Connor, III,

Captain, U.S. Coast Guard,

Captain of the Port Boston.

[FR Doc. 2012–20828 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0661]

RIN 1625–AA00

Safety Zone: Wedding Reception Fireworks at Pier 24, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay near Pier 14 in San Francisco, CA in support of the Wedding Reception Fireworks at Pier 24 on August 24, 2012. This safety zone is established to ensure the safety of mariners and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 9 a.m. through 9:30 p.m. on August 24, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0661. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. The Coast Guard received notification of the event on June 29, 2012 and the event would occur before an NPRM and response to public comment could be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons stated above, delaying the effective date would be impracticable.

B. Basis and Purpose

The legal basis for the temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 *et seq.*).

Stanlee R. Gatti Designs will sponsor the Wedding Reception Fireworks at Pier 24 on August 24, 2012, in the navigable waters of the San Francisco Bay midway between Pier 14 and the Bay Bridge in San Francisco, CA. From 9 a.m. until 2 p.m. on August 24, 2012 the fireworks barge will be loaded off of Pier 50 in San Francisco, CA at position 37°46′28″ N, 122°23′06″ W (NAD 83). From 8 p.m. to 8:20 p.m. on August 24, 2012 the loaded barge will transit from Pier 50 to the launch site midway between Pier 14 and the Bay Bridge at position 37°47′35″ N, 122°23′13″ W (NAD 83). The Coast Guard has granted the event sponsor a marine event permit for the fireworks display. The fireworks display is meant for entertainment purposes and a safety zone is necessary to establish a temporary restricted area on the waters surrounding the fireworks display. A restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. Upon the commencement of the 8 minute fireworks display, scheduled to take place from 9:15 p.m. to 9:23 p.m. on August 24, 2012, the safety zone will encompass the navigable waters around and under the fireworks launch site within a radius 560 feet at position 37°47′35″ N, 122°23′13″ W (NAD 83) for the Wedding Reception Fireworks at Pier 24 in San Francisco, CA. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks launch site during the fireworks display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 13 of these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This

rule is categorically excluded from further review under paragraph 34(g) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–511 to read as follows:

§ 165.T11–511 Safety zone; Wedding Reception Fireworks at Pier 24, San Francisco, CA

(a) *Location.* This temporary safety zone is established for the navigable waters of the San Francisco Bay in San Francisco, California as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. The temporary safety zone applies to the navigable waters around the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the pyrotechnics from Pier 50 to the launch site located midway between Pier 14 and the Bay Bridge in position 37°47′35″ N, 122°23′13″ W (NAD 83). From 9:15 p.m. until 9:23 p.m. on August 24, 2012, the temporary safety zone will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 560 feet.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be in effect from 9 a.m. until 9:30 p.m. on August 24, 2012. As described above, this zone will be enforced during pyrotechnics loading, barge transit, and the fireworks show. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''*designated representative*'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: July 30, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–20338 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0706]

RIN 1625–AA00

Safety Zone: Bay Bridge Load Transfer Safety Zone, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay near Yerba Buena Island, CA in support of the Bay Bridge Load Transfer Safety Zone from August 1, 2012 through October 31, 2012. This safety zone is established to protect mariners transiting the area from the dangers associated with the load transfer operations. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective with actual notice from August 1, 2012 through August 23, 2012. This rule is effective in the Code of Federal Regulations from August 23, 2012 until October 31, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0706. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and contrary to the public interest. The Coast Guard received notification of the load transfer operations on July 17, 2012 and it

would be impracticable to publish an NPRM and receive public comment before the commencement of the event. Because of the dangers posed by transferring the load of the Bay Bridge from the temporary suspension arrangement to the permanent suspension arrangement, the safety zone is necessary to provide for the safety of mariners transiting the area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons stated above, delaying the effective date would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the proposed temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C. 1221 *et seq.*).

CALTRANS will sponsor the Bay Bridge Load Transfer Safety Zone on August 1, 2012 through October 31, 2012, in the navigable waters of the San Francisco Bay near Yerba Buena Island, CA. Load Transfer operations are scheduled to take place from 12 a.m. on August 1, 2012 until 11:59 p.m. on October 31, 2012. The load transfer is necessary to facilitate the completion of the Bay Bride construction project. The Bay Bridge is constructed using a temporary suspension system that must be transitioned to a permanent load-bearing system. The safety zone is needed to establish a temporary limited access area on the waters surrounding the load transfer operation. The safety zone is necessary to protect mariners transiting the area from the dangers associated with the load transfer of the Bay Bridge.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone in navigable waters around and under the Bay Bridge within a box connected by the following points: 37°49′06″ N, 122°21′17″ W; 37°49′01″ N, 122°21′12″ W; 37°48′48″ N, 122°21′35″ W; 37°48′53″ N, 122°21′40″ W (NAD 83) during the load transfer. Load transfer operations are scheduled to take place from 12 a.m. on August 1, 2012 until 11:59 p.m. on October 31, 2012.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the load transfer operation. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–513 to read as follows:

§ 165.T11–513 Safety zone; Bay Bridge Load Transfer Safety Zone, San Francisco Bay, San Francisco, CA.

(a) *Location.* This temporary safety zone is established in the navigable waters of the San Francisco Bay near Yerba Buena Island, California as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. The safety zone will encompass the navigable waters of the San Francisco Bay within a box connected by the following points: 37°49′06″ N, 122°21′17″ W; 37°49′01″ N, 122°21′12″ W; 37°48′48″ N, 122°21′35″ W; 37°48′53″ N, 122°21′40″ W (NAD 83).

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be in effect from 12 a.m. on August 1, 2012 until 11:59 p.m. on October 31, 2012. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: July 30, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–20337 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0072]

RIN 1625–AA00

Safety Zone; Jet Express Triathlon, Sandusky Bay, Lake Erie, Lakeside, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Erie in the vicinity of East Harbor State Park, OH, from 8:00 a.m. until 10:00 a.m. on September 9, 2012. This safety zone is intended to restrict vessels from portions of Lake Erie during the Jet Express Triathlon.

This safety zone is necessary to protect participants, spectators and vessels from the hazards associated with triathlon event.

DATES: This final rule is effective from 8:00 a.m. until 10:00 a.m. on September 9, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0072. To view documents mentioned in this preamble as being available in the docket, go *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On April 26, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones: Jet Express Triathlon, Sandusky Bay, Lake Erie, Lakeside, OH in the **Federal Register** (77 FR 24880). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard is issuing this temporary final rule less than 30 days after its publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), an agency may issue a rule less than 30 days before its effective date when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Accordingly, the Coast Guard finds that good cause exists for publishing this temporary final rule less than 30 days before its effective date because delaying the effective date of this temporary final rule would prevent its enforcement on the scheduled night of the event and thus, would preclude the Coast Guard from protecting spectators and vessels from the hazards associated with a maritime fireworks display.

B. Basis and Purpose

The organization Endurance Sports Productions is sponsoring a triathlon: A bike, swim and run event. The swim portion of the event will take place in Lake Erie. The participants will begin by jumping off the ferry boat JET EXPRESS II at the designated position, then swim to the dedicated position on shore. This swim portion will take place on September 9, 2012 at approximately 8:00 a.m. and will last about an hour. The Captain of the Port Detroit has determined that the swim portion of the event will pose certain public hazards. Such hazards include obstructions to the waterway that may cause marine casualties and vessels colliding with swimmers that may cause death or serious bodily harm. With aforementioned hazards in mind, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of participants and vessels during the practice, the half triathlon, and the triathlon events.

C. Discussion of Comments, Changes and the Final Rule

As mentioned above, no comments were received during the public comment period, and as such, no changes to the text of the rule were made.

The temporary safety zone established herein will be effective and enforced from 8:00 a.m. until 10:00 a.m. on September 9, 2012. The safety zone will encompass all waters of Lake Erie within a direct line from 41°33′49″ N, 082°47′8″ W to 41°33′25″ N, 82°48′8″ W and 15 yards on either side of direct line. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the above portion of the Sandusky Bay of Lake Erie near Lakeside, OH between

8:00 a.m. and 10 a.m. on September 9, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only approximately two hours. Also, in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. Additionally, the Coast Guard will give advanced notice to the public via a local Broadcast Notice to Mariners that the regulation is in effect. Moreover, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule involves the establishment of a safety zone and thus, paragraph (34)(g) of the Instruction applies. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0072 as follows:

§ 165.T09–0072 Safety Zone; Jet Express Triathlon, Sandusky Bay, Lake Erie, Lakeside, OH.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Erie within a direct line from 41°33'49''N, 082°47'8''W to 41°33'25''N, 82°48'8''W and 15 yards on either side of the direct line. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced from 8:00 a.m. until 10:00 a.m. on September 9, 2012.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: August 6, 2012.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2012–20190 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0712]

RIN 1625–AA87

Security Zones; Certain Dangerous Cargo Vessels, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones around Certain Dangerous Cargo (CDC) vessels, which are vessels carrying anhydrous ammonia, liquefied propane gas (LPG), and ammonium nitrate. The security zones will start at buoys 3 and 4 in Tampa Bay ''F'' cut following the vessel to the pier, from pier to pier for berth shifts, and from the pier out to buoys 3 and 4 in Tampa Bay ''F'' cut. The security zones are to be implemented during the 2012 Republican National Convention from August 25, 2012, through August 31, 2012.

DATES: This rule is effective from 12:01 p.m. on August 25, 2012, through 11:59 a.m. on August 31, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0712. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
CDC Certain Dangerous Cargo
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the need for these security zones until July 19, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to implementation of the security zones. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the convention delegates, official parties, dignitaries, the public, and surrounding waterways.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to provide for the safety and security of convention delegates, official parties, dignitaries, and the public during the 2012 Republican National Convention.

C. Discussion of Rule

The security zones will be effective and enforced from August 25, 2012 through August 31, 2012, during the 2012 Republican National Convention held in Tampa, Florida.

The Secretary of the Department of Homeland Security has designated the 2012 Republican National Convention as a National Special Security Event. National Special Security Events are significant events, which, due to their

political, economic, social, or religious significance, may render them particularly attractive targets of terrorism or other criminal activity. The Federal government provides support, assistance, and resources to State and local governments to ensure public safety and security during National Special Security Events.

Numerous Federal, State, and local agencies, including the U.S. Secret Service, Federal Bureau of Investigation, Customs and Border Protection, U.S. Coast Guard, and the Joint Terrorism Task Force, have developed comprehensive security plans to protect participants and the public during the Republican National Convention. As part of the comprehensive effort, the maritime security objective is to protect Convention participants, the maritime transportation system, and maritime stakeholders, including recreational boaters, from threats and security vulnerabilities. The Coast Guard and other Federal, State, and local agencies involved in security for the 2012 Republican National Convention have conducted threat, vulnerability, and risk analyses relating to the event.

The convention is expected to draw widespread protests by persons dissatisfied with national policy, foreign policy, and the Republican Party agenda. This politically-oriented event has the potential to attract anarchists and others persons intent on expressing their opposition through violence and criminal activity. The convention also presents an attractive target for terrorist and extremist organizations. Current analysis indicates that some activist groups are planning maritime activities to make their political views known.

Maritime security vulnerabilities during the 2012 Republican National Convention extend beyond the Convention site and include secondary venues throughout the Tampa Bay area. Considerable law enforcement presence on land may render maritime approaches a viable alternative for activist groups. The City of Tampa has critical infrastructure in its port area, which is proximate to the downtown area and the Convention's main venues. The Port of Tampa is an industrial-based port, with significant storage and shipment of hazardous materials.

The security zones and accompanying security measures have been specifically developed to mitigate the threats and vulnerabilities identified in the analysis discussed above. Security measures have been limited to the minimum necessary to mitigate risks associated with the identified threats.

The rule will establish moving security zones around Certain Dangerous Cargo (CDC) vessels in the Captain of the Port St. Petersburg Zone during the 2012 Republican National Convention in Tampa, Florida. A CDC vessel is one carrying anhydrous ammonia, liquefied propane gas, and ammonium nitrate. The security zones prohibit any vessel from entering within 500 yards of a CDC vessel. The security zones will start at buoys 3 and 4 in Tampa Bay ''F'' cut following the vessel to the pier, from pier to pier for berth shifts, and from the pier out to buoys 3 and 4 in Tampa Bay ''F'' cut.

All persons and vessels desiring to enter or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter or remain within the regulated areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. Recreational vessels authorized to enter or remain within the regulated areas may be subject to boarding and inspection of the vessel and persons onboard.

The security zones would be enforced from 12:01 p.m. on August 25, 2012, through 11:59 a.m. on August 31, 2012.

A Port Community Information Bulletin (PCIB) will be distributed by Coast Guard Sector St. Petersburg. The PCIB will be available on the Coast Guard Internet Web portal at *http://homeport.uscg.mil.* PCIBs are located under the Port Directory tab in the Safety and Security Alert links. The Coast Guard would provide notice of the security zones by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The security zones will be enforced for a total of 144 hours, and only while CDC vessels are transiting within Tampa Bay; (2) vessels will be authorized to transit the security zones with the permission of the Captain of the Port or a designated representative; (3) vessels may operate in the surrounding area during the enforcement period; and (4) the Coast Guard would provide advance notification of the security zones to the local community by Local Notice to Mariners, Broadcast Notice to Mariners, and public outreach.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter or remain within those portions of the security zones encompassing Certain Dangerous Cargo vessels while transiting through Tampa Bay from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a moving security zone around vessels containing certain dangerous cargo. This rule is categorically excluded from further review under paragraph (34)(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0712 to read as follows:

§ 165.T07–0712 Security Zones; Certain Dangerous Cargo Vessels, Captain of the Port St. Petersburg Zone, Tampa, FL.

(a) *Regulated Areas.* The following regulated areas are moving security zones around vessels containing Certain Dangerous Cargo (CDC).

(1) All waters within a 500 yard radius around any CDC vessel as the vessel transits into Tampa Bay, starting at Tampa Bay Cut ''F'' Channel at Lighted Buoys ''3F'' and ''4F'' and continuing until the CDC vessel moors at the receiving facility.

(2) All waters within a 500 yard radius around any CDC vessel as the vessel departs Tampa Bay, starting when the vessel unmoors from the receiving terminal and continuing until the vessel passes Tampa Bay Cut ''F'' Channel at Lighted Buoys ''3F'' and ''4F.''

(b) *Definitions.*

(1) The term ''*designated representative*'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(2) The term ''*Certain Dangerous Cargo vessel*'' or ''CDC vessel'' is a vessel carrying Anhydrous Ammonia (NH3), Liquefied Petroleum Gas (LPG), or Ammonium Nitrate (NH4) and that is escorted by a U.S. Coast Guard vessel.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within moving security Zones unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) All persons and vessels desiring to enter or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization.

(3) Any vessel or person receiving authorization to enter the moving security zone must comply with any instructions issued by the Captain of the Port or a designated representative, including the following:

(i) No vessel may enter within a 100 yard radius of the CDC vessel at any time;

(ii) Vessels authorized to enter the security zone must proceed at the minimum speed necessary to maintain safe navigation; and

(iii) Vessels authorized to enter the security zone are subject to boarding and inspection of the vessel and persons onboard.

(4) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives. A Port Community Information Bulletin is available on the Coast Guard internet web portal at *http://homeport.uscg.mil.* Port Community Information Bulletins are located under the Port Directory tab in the Safety and Security Alert links.

(d) *Effective Date.* This rule is effective from 12:01 p.m. on August 25, 2012, through 11:59 a.m. on August 31, 2012.

Dated: August 12, 2012.

S.L. Dickinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2012–20706 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0707]

RIN 1625–AA87

Security Zones; 2012 RNC Bridge Security Zones, Captain of the Port St. Petersburg Zone, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing fifteen temporary security zones around certain bridges on the waters of Pinellas County and Tampa Bay, Florida, during the 2012 Republican National Convention, from August 25, 2012, to August 31, 2012. The security zones are necessary to protect convention delegates, official parties, dignitaries, the public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature, intended to harm people, damage property, or disrupt the proceedings of the 2012 Republican National Convention. All persons and vessels are prohibited from loitering, anchoring, stopping, or mooring on waters within 50 yards of the designated bridges during the times that the security zones will be enforced for each bridge. Expeditious transiting through the security zones is authorized.

This rule establishes security zones around the following bridges: the Gandy Bridge; Howard Franklin Bridge; Courtney Campbell Causeway Bridge; the Clearwater Memorial Causeway (60); Sand Key Bridge (699); Belleair Causeway Bridge; Walsingham Rd Bridge (688); Park Blvd. (co Rd 694); Welch Causeway (Tom Stuart Causeway/150th Ave); Seminole Bridge (Bay Pines Blvd./19/595); Johns Pass Bridge (Gulf Blvd./699); Treasure Island Causeway (Central Ave); Corey Causeway (Pasadena Ave); Blind Pass Bridge (699); and Pinellas Bayway Structures A, B, and C.

DATES: This rule is effective from 12:01 p.m. on Saturday, August 25, 2012, through 1:00 a.m. on Friday, August 31, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0707. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the need to establish these security zones until July 18, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to implementation of the security zones. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the convention delegates, official parties, dignitaries, the public, and surrounding waterways.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to protect convention delegates, official parties, dignitaries, the public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature, intended to harm people, damage property, or disrupt the proceedings of the 2012 Republican National Convention.

C. Discussion of Rule

The Secretary of the Department of Homeland Security has designated the 2012 Republican National Convention as a National Special Security Event. National Special Security Events are significant events, which, due to their political, economic, social, or religious

significance, may render them particularly attractive targets of terrorism or other criminal activity. The Federal government provides support, assistance, and resources to state and local governments to ensure public safety and security during National Special Security Events.

Numerous Federal, State, and local agencies, including the U.S. Secret Service, Federal Bureau of Investigation, Customs and Border Protection, U.S. Coast Guard, and the Joint Terrorism Task Force, have developed comprehensive security plans to protect participants and the public during the Republican National Convention. As part of the comprehensive effort, the maritime security objective is to protect Convention participants, the maritime transportation system, and maritime stakeholders, including recreational boaters, from threats and security vulnerabilities. The Coast Guard and other Federal, State, and local agencies involved in security for the 2012 Republican National Convention have conducted threat, vulnerability, and risk analyses relating to the event.

The convention is expected to draw widespread protests by persons dissatisfied with national policy, foreign policy, and the Republican Party agenda. This politically-oriented event has the potential to attract anarchists and others persons intent on expressing their opposition through violence and criminal activity. The convention also may present an attractive target for terrorist and extremist organizations. Current analysis indicates that some activist groups are planning maritime activities to make their political views known.

Maritime security vulnerabilities during the 2012 Republican National Convention extend beyond the Convention site and include secondary venues throughout the Tampa Bay area. The geography of the Tampa Bay region makes these fifteen bridges a vital component of the regional transportation network. Dignitaries, delegates, and participants at the Convention will be required to travel across these bridges to reach secondary venue locations. Further, dignitaries, delegates, and participants in the Republican National Convention will be staying at numerous hotels in Clearwater, St. Petersburg, and other areas. This will require those persons to make daily transits across the bridges spanning Tampa Bay and the Inter-Coastal Waterway to attend the Convention and associated events.

These fifteen security zones, developed in conjunction with comprehensive security planning and actions by other agencies, will assist in the safe and secure transportation of dignitaries and delegates to the Convention. In addition, the security zones will prevent disruption of these vital components of the region's transportation network that may be caused by violent protesters and other groups drawn to this event. In addition, the security zones will prevent persons from using the bridges and surrounding waters to stop or impede maritime traffic during the event.

The security zones and accompanying security measures have been specifically developed to mitigate the threats and vulnerabilities identified in the analysis discussed above. Security measures have been limited to the minimum necessary to mitigate risks associated with the identified threats.

This rule will establish temporary security zones around fifteen bridges in the Captain of the Port St. Petersburg area during the 2012 Republican National Convention in Tampa, Florida. This rule is effective from 12:01 p.m. on Saturday, August 25, 2012, through 1:00 a.m. on Friday, August 31, 2012.

All persons and vessels are prohibited from loitering, anchoring, stopping, or mooring under or within 50 yards of either side of the designated bridges. Expeditious transiting through the security zones is authorized. The security zones will be enforced 24-hours a day for the Gandy Bridge, Howard Franklin Bridge, and Courtney Campbell Causeway Bridge.

The remaining security zones will be established around: The Clearwater Memorial Causeway (60); Sand Key Bridge (699); Belleair Causeway Bridge; Walsingham Rd Bridge (688); Park Blvd.(co Rd 694); Welch Causeway (Tom Stuart Causeway/150th Ave); Seminole Bridge (Bay Pines Blvd./19/595); Johns Pass Bridge (Gulf Blvd./699); Treasure Island Causeway (Central Ave); Corey Causeway (Pasadena Ave); Blind Pass Bridge (699); and Pinellas Bayway Structures A, B, and C. These security zones will be enforced for other bridges as follows:

Sunday, August 26: 3:00 p.m. to 8:00 p.m.;
Monday, August 27: 11:00 a.m. to 2:00 p.m. and 3:00 p.m. to 7:00 p.m.;
Tuesday, August 28: 3:00 p.m. to 7:00 p.m.;
Wednesday, August 29: 3:00 p.m. to 7:00 p.m.; and
Thursday, August 30: 3:00 p.m. to 7:00 p.m.

A Port Community Information Bulletin (PCIB) will be distributed by Coast Guard Sector St. Petersburg. The PCIB will be available on the Coast Guard Internet web portal at *http://homeport.uscg.mil*. PCIBs are located under the Port Directory tab in the Safety and Security Alert links. The Coast Guard will provide notice of the security zones by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The security zone will be effective for only six days; (2) although persons and vessels are prohibited from remaining or anchoring within the security zones during the effective dates, normal navigational transits will be authorized; and (3) vessels may operate in the area outside the security zones during the effective period.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to anchor or remain in any of the fifteen security zones during the effective periods described in the rule. These security zones would not have a significant economic impact on a substantial number of small entities for the reasons discussed in the

Regulatory Planning and Review section above.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of fifteen temporary security zones. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0707 to read as follows:

§ 165.T07–0707 Security Zones; 2012 Republican National Convention, Captain of the Port St. Petersburg Zone, Tampa, FL.

(a) *Regulated Areas.* All waters under and within 50 yards of either side of the following bridges are established as temporary security zones:

(1) The Gandy Bridge,

(2) Howard Franklin Bridge,

(3) Courtney Campbell Causeway Bridge,

(4) The Clearwater Memorial Causeway (60),

(5) Sand Key Bridge (699),

(6) Belleair Causeway Bridge,

(7) Walsingham Rd Bridge (688),

(8) Park Blvd.(co Rd 694),

(9) Welch Causeway (Tom Stuart Causeway/150th Ave),

(10) Seminole Bridge (Bay Pines Blvd./19/595),

(11) Johns Pass Bridge (Gulf Blvd./699),

(12) Treasure Island Causeway (Central Ave),

(13) Corey Causeway (Pasadena Ave),

(14) Blind Pass Bridge (699),

(15) Pinellas Bayway Structure A, B, and C.

(b) *Definition.* The term ''*designated representative*'' means Coast Guard Patrol Commanders, including Coast Guard boat coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officials designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from loitering, anchoring, stopping, or mooring under or within the regulated areas, unless authorized by a designated representative. Expeditious transiting through the security zones is authorized.

(2) The security zones will be enforced at all times from 12:01 p.m. on Saturday, August 25, 2012, through 1:00 a.m. on Friday, August 31, 2012, for the Gandy Bridge, Howard Franklin Bridge, and Courtney Campbell Causeway Bridge.

(3) The security zones will be enforced for the Clearwater Memorial Causeway (60); Sand Key Bridge (699); Belleair Causeway Bridge; Walsingham Rd Bridge (688); Park Blvd.(co Rd 694); Welch Causeway (Tom Stuart Causeway/150th Ave); Seminole Bridge (Bay Pines Blvd./19/595); Johns Pass Bridge (Gulf Blvd./699); Treasure Island Causeway (Central Ave); Corey Causeway (Pasadena Ave); Blind Pass Bridge (699); and Pinellas Bayway Structures A, B, and C; as follows:

(i) Sunday, August 26: 3:00 p.m. to 8:00 p.m.;

(ii) Monday, August 27: 11:00 a.m. to 2:00 p.m. and 3:00 p.m. to 7:00 p.m.;

(iii) Tuesday, August 28: 3:00 p.m. to 7:00 p.m.;

(iv) Wednesday August 29: 3:00 p.m. to 7:00 p.m.; and

(v) Thursday August 30: 3:00 p.m. to 7:00 p.m.

(4) A Port Community Information Bulletin is available on the Coast Guard Internet Web portal at *http://homeport.uscg.mil.* Port Community Information Bulletins are located under the Port Directory tab in the Safety and Security Alert links.

(5) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 12:01 p.m. on Saturday, August 25, 2012, through 1:00 a.m. on Friday, August 31, 2012.

Dated: August 14, 2012.

S.L. Dickinson,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2012–20699 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

Electronic Transmission of Customs Data—Outbound International Letter-Post Items

AGENCY: Postal Service™.

ACTION: Final rule with comment period.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) to require that customs data be electronically transmitted for international letter-post mailpieces bearing a customs declaration form when the items are paid with a permit imprint.

DATES: *Effective Date:* November 5, 2012. We must receive your comments on or before September 24, 2012.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. Email comments, containing the name and address of the commenter, may be sent to *MailingStandards@usps.gov*, with a subject line of ''Electronic Transmission of Customs Data.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: In the final rule published on December 5, 2011 (76 FR 75786–75794), the Postal Service announced that, effective January 22, 2012, mailers paying the retail price would no longer be permitted to enter Express Mail International® or Priority Mail International® items bearing a permit imprint at a business mail entry unit (BMEU) since the information contained on the customs declaration was not electronically transmitted. That final rule supported policy changes to require the electronic transmission of customs data prior to mailing in a greater range of circumstances. Electronic transmission of customs data enables the Postal Service and other federal agencies to ensure mailers' compliance with federal export requirements. Effective November 5, 2012, the same requirements will also apply to the following classes of mail when the item bears a PS Form 2976, *Customs Declaration CN 22—Sender's Declaration:*

- First-Class Mail International®.
- Airmail M-bags™.
- International Priority Airmail™ (IPA®), including IPA M-bags.
- International Surface Air Lift® (ISAL®), including ISAL M-bags.

With this change, customs data must be electronically transmitted before a mailer can enter any mailpiece bearing a customs declaration at a BMEU. This update will assist the Postal Service and other federal agencies to monitor mailers' compliance with federal export regulations that, among other things, prohibit certain goods from being sent to persons, entities, or countries determined to be adverse to U.S. interests. Data required to be transmitted includes the sender's name and address, the addressee's name and address, details about the item's contents, and the date of mailing. In addition, for IPA and ISAL mailings prepared in direct country sacks, we will require mailers to generate a receptacle barcode that includes the shipment date and permit number. To comply with these standards, mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov.*

Finally, with this change, the Postal Service is reducing the current 5-pound minimum to 3 pounds for mailers preparing IPA and ISAL direct country sacks. This change will make it easier for mailers to qualify for the lower direct country sack price—currently, when there is less than 5 pounds of mail sent to an individual country, these sacks can only qualify for the mixed country sack price, or the worldwide nonpresort price. In addition, for mailers who currently commingle items bearing customs forms with items that do not have customs forms (in direct country sacks), this lower limit will assist mailers in preparing separate sacks for items bearing a customs form, effective November 5, 2012.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in

the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

240 First-Class Mail International

* * * * *

243 Prices and Postage Payment Methods

* * * * *

243.3 Permit Imprint—General

[Revise 243.3 to read as follows:]

Mailers may use a permit imprint for mailing identical- or nonidentical-weight First-Class Mail International items. Any of the First-Class Mail International permit imprint formats shown in *Exhibit 152.44* are acceptable. Permit imprints must not denote ''bulk mail'', ''nonprofit'', or other domestic or special mail markings. For items requiring a customs form, mailers must also meet the following requirements:

a. Pay for postage with a permit imprint through an advance deposit account.

b. Nonidentical-weight items must meet the permit imprint requirements under IMM 152.4 and the manifesting requirements under DMM 604 and DMM 705.

In addition, for items requiring PS Form 2976 (see Exhibit 123.61), mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov.*

* * * * *

260 Direct Sacks of Printed Matter to One Addressee (M-bags)

* * * * *

264 Mail Preparation

* * * * *

264.3 Customs Forms Required

[Revise 264.3 to read as follows:]

M-bags must be accompanied by a fully completed PS Form 2976, which is to be affixed to PS Tag 158, *M-bag Addressee Tag.* The maximum allowable value is $400. When paying with a permit imprint, mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov.*

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail (IPA) Service

292.1 Description

* * * * *

292.13 IPA M-bags

[Delete the current text from 292.13 and insert new 292.131 and 292.132 to read as follows:]

292.131 IPA M-bags—General

IPA M-bags (direct sacks of printed matter to one addressee) may be entered in conjunction with an IPA mailing, are subject to the provisions of 260, and may be sent to all destination countries that are referenced in Exhibit 292.452. When using this method of mail preparation, the sender must complete PS Tag 115, *International Priority Airmail,* and PS Tag 158, *M-bag Addressee Tag.* Tags must be securely attached to the neck of the sack.

292.132 IPA M-bags—Customs Forms

IPA M-bags always require a fully completed PS Form 2976, which is to be affixed to PS Tag 158. Mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov.*

292.2 Eligibility

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292.23 Minimum Quantity Requirements

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292.232 Presort Eligibility—Full Service

[Revise 292.232 to read as follows:]

Only a direct country sack containing a minimum of 3 pounds qualifies for the presort price. All remaining mail must be prepared and paid at the worldwide nonpresort price.

292.233 Presort Eligibility—ISC Drop Shipment

[Revise 292.233 to read as follows:]

Only a direct country sack containing a minimum of 3 pounds or a mixed country sack containing a minimum of 5 pounds qualifies for the presort price. All remaining mail must be prepared and paid at the worldwide nonpresort price.

* * * * *

292.25 Customs Forms Requirements

[Revise 292.25 to read as follows:]

For items requiring a PS Form 2976 (see 123.61), mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov.*

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292.4 Mail Preparation

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292.44 Physical Characteristics and Requirements for All Bundles

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[After item d, insert a ''Note'' to read as follows:]

Note: Parcel-size pieces do not require bundling.

292.45 Sortation

292.451 Presort Mailings—General

[Revise 292.451 in its entirety to read as follows:]

Follow these steps when preparing IPA presort mail:

a. *Full Service.*

1. Mail that is addressed to an individual country and that contains 3 pounds or more must be sorted into direct country sacks. Mail that cannot be made up into direct country sacks must be prepared and entered at the worldwide nonpresort price. Mailers must bundle letter-size and flat-size pieces as defined in 292.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

2. Mailers must sack separately, items bearing customs forms from items not bearing customs forms. Each type of sack must individually meet the 3-pound minimum to qualify.

b. *ISC Drop Shipment—Direct country sacks.*

1. Mail that is addressed to an individual country and that contains 3 pounds or more must be sorted into direct country sacks. Mail that cannot be made up into direct country sacks must be prepared and entered at the mixed country or worldwide nonpresort price. Mailers must bundle letter-size and flat-size pieces as defined in 292.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

2. Mailers must sack separately items bearing customs forms from items not bearing customs forms. Each type of sack must individually meet the 3-pound minimum to qualify.

c. *ISC Drop Shipment—Mixed country sacks.* Mixed county sacks can be prepared only after all possible direct country sacks have been prepared. Only countries in price groups 11–15 are eligible for mixed country sack pricing. Mailers must sort individual countries within a single price group that contain 5 pounds or more into mixed country sacks. Mail that ultimately cannot be made up into direct country sacks or mixed country sacks must be prepared and entered at the worldwide nonpresort price. Mailers must bundle letter-size and flat-size pieces as defined in 292.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

Note: There are separate preparation requirements for mail to Canada. See *292.47.*

292.452 Presorted Mail—Direct Country Bundle Label

[Revise the first sentence of 292.452 to read as follows:]

Only letter-size and flat-size direct country bundles prepared for mixed country sacks require a label (facing slip).* * *

* * * * *

292.453 Worldwide Nonpresort Mail—Bundles

* * * * *

[Revise 292.453 to read as follows:]

Mailers must bundle letter-size and flat-size pieces as defined in 292.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack. Labels (facing slips) are not required on any bundles.

292.46 Sacking Requirements

[Revise the title to 292.461 to read as follows:]

292.461 Direct Country Sack (3 Pounds or More)

* * * * *

The following standards apply:

[Revise 292.461a and b(1) to read as follows (note that we have used bold text in this article to indicate revised text, but the text in the actual revised IMM will not appear in bold):]

a. *General.* **Mailers must sack separately, items bearing customs forms from items not bearing customs forms.** When there are **3** pounds or more of mail addressed to the same country, the mail must be enclosed in a direct country sack. All types of mail, including letter-size bundles, flat-size bundles, and loose items, can be commingled in the same sack for each destination and counted toward the 3-pound minimum, **provided items bearing a customs form are sacked separately from items not bearing customs forms**. The maximum weight of the sack and contents must not exceed 66 pounds.

b. *Direct Country Sack Tags.* For each direct country sack, the mailer must do the following:

1. Complete PS Tag 178, *Airmail Bag Label LC (CN 35/AV 8) (white),* which is a white tag designed to route the sack to a specific country. The mailer must complete the ''To'' block showing the destination country and the foreign office of exchange code as listed in Exhibit 292.452. **In addition, mailers must apply to the tag a barcode that indicates the mailer's permit number, the product code, the service type code, the receptacle type, the destination office of exchange, and the serial number of the sack. To request technical specifications for the barcode, send, an email to globalbusinesssales@usps.gov.** Postal Service personnel—not the mailer—must complete the blocks for date, weight, and dispatch information.

* * * * *

292.47 Mail Preparation for Canada

[Revise the intro and items a and b of 292.47 to read as follows (note that we have used bold text in this article to indicate revised text, but the text in the actual revised IMM will not appear in bold):]

Mailers must sack separately, items bearing customs forms from items not bearing customs forms. Mailers must prepare letter-size, flat-size, and package-size items destined to Canada in separate containers **as defined in items a through c.** To qualify for the presort price, the same eligibility requirements apply as for full service (see 292.232) or ISC drop shipment (see 292.233). If the total mailing contains less than 3 pounds of mail for Canada, then the mail qualifies only for the worldwide nonpresort price but may be included with mail for other countries. Mailings that exclusively contain worldwide nonpresort mail to Canada have a 50-pound minimum, and mailers must prepare them under 292.453 and 292.463. Mailers must prepare presorted IPA mail (full-service price and ISC drop shipment price) to Canada as follows:

a. *Letter-Size and Flat-Size Mail.* Prepare letter-size items in letter trays, either 1-foot or 2-foot, depending on volume. Prepare flat-size items in flat trays. Face all letter-size items and flat-size items in the same direction. Ensure that all trays are full enough to keep the mail from mixing during transportation. Cover (i.e., ''sleeve'') all letter-size and flat-size trays and secure them with strapping. Do not prepare the content of trays in bundles. In addition, the mailer must complete PS Tag 115, *International Priority Airmail,* must write ''Canada'' on the front side of the tag, and must tape the tag to the tray sleeve. **In addition, mailers must apply to the tag a barcode that indicates the mailer's permit number, the product code, the service type code, the receptacle type, the destination office of exchange, and the serial number of the tray. To request technical specifications for the barcode, send an email to globalbusinesssales@usps.gov.**

b. *Packages.* Prepare package-size items (i.e., items that cannot be prepared in trays because of their size or shape) loose in sacks. Affix PS Tag 178, *Airmail Bag Label LC (CN 35/AV 8) (white),* to the neck of the sack and write Canada in the ''To'' block of the tag. In addition, affix PS Tag 115, *International Priority Airmail,* to the neck of the sack and write ''Canada'' on the back of the tag. **In addition, mailers must apply to the tag a barcode that indicates the mailer's permit number, the product code, the service type code, the receptacle type, the destination office of exchange, and the serial number of the sack. To request technical**

specifications for the barcode, send an email to globalbusinesssales@usps.gov.

* * * * *

293 International Surface Air Lift (ISAL) Service

293.1 Description

* * * * *

293.13 ISAL M-bags

[Delete the current text from 293.13 and insert new items 293.131 and 293.132 to read as follows:]

293.131 ISAL M-bags—General

ISAL M-bags (direct sacks of printed matter to one addressee) may be entered in conjunction with an ISAL mailing, are subject to the provisions of 260, and may be sent to all destination countries that are referenced in Exhibit 293.452. When using this method of mail preparation, the sender must complete PS Tag 155, *Surface Airlift Mail,* and PS Tag 158, *M-bag Addressee Tag.* Tags must be securely attached to the neck of the sack.

293.132 ISAL M-bags—Customs Forms

ISAL M-bags always require a fully completed PS Form 2976, which is to be affixed to PS Tag 158. Mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov*.

293.2 Eligibility

* * * * *

293.23 Minimum Quantity Requirements

* * * * *

293.232 Presort Eligibility—Full Service

[Revise 293.232 to read as follows:]

Only a direct country sack containing a minimum of 3 pounds qualifies for the presort price. All remaining mail must be prepared and paid at the worldwide nonpresort price.

293.233 Presort Eligibility—ISC Drop Shipment

[Revise 293.233 to read as follows:]

Only a direct country sack containing a minimum of 3 pounds or a mixed country sack containing a minimum of 5 pounds qualifies for the presort price. All remaining mail must be prepared and paid at the worldwide nonpresort price.

* * * * *

293.25 Customs Forms Requirements

[Revise 293.25 to read as follows:]

For items requiring a customs form (see 123.61), mailers must electronically transmit customs data by using USPS-produced Global Shipping Software (GSS) or other USPS-approved software. To request information about either of these software solutions, send an email to *globalbusinesssales@usps.gov*.

* * * * *

293.4 Mail Preparation

* * * * *

293.44 Physical Characteristics and Requirements for All Bundles

The following standards apply:

* * * * *

[After item d, insert a ''Note'' to read as follows:]

Note: Parcel-size pieces do not require bundling.

293.45 Sortation

293.451 Presort Mailings—General

[Revise 293.451 in its entirety to read as follows:]

Follow these steps when preparing ISAL presort mail:

a. *Full Service.*

1. Mail that is addressed to an individual country and that contains 3 pounds or more must be sorted into direct country sacks. Mail that cannot be made up into direct country sacks must be prepared and entered at the worldwide nonpresort price. Mailers must bundle letter-size and flat-size pieces as defined in 293.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

2. Mailers must sack separately items bearing customs forms from items not bearing customs forms. Each type of sack must individually meet the 3-pound minimum to qualify.

b. *ISC Drop Shipment—Direct country sacks.*

1. Mail that is addressed to an individual country and that contains 3 pounds or more must be sorted into direct country sacks. Mail that cannot be made up into direct country sacks must be prepared and entered at the mixed country or worldwide nonpresort price. Mailers must bundle letter-size and flat-size pieces as defined in 293.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

2. Mailers must sack separately items bearing customs forms from items not bearing customs forms. Each type of sack must individually meet the 3-pound minimum to qualify.

c. *ISC Drop Shipment—Mixed country sacks.* Mixed county sacks can be prepared only after all possible direct country sacks have been prepared. Only countries in price groups 11–15 are eligible for mixed country sack pricing. Mailers must sort individual countries within a single price group that contain 5 pounds or more into mixed country sacks. Mail that ultimately cannot be made up into direct country sacks or mixed country sacks must be prepared and entered at the worldwide nonpresort price. Mailers must bundle letter-size and flat-size pieces as defined in 293.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

293.452 Presorted Mail—Direct Country Bundle Label

[Revise the first sentence of 293.452 to read as follows:]

Only letter-size and flat-size direct country bundles prepared for mixed country sacks require a label (facing slip). * * *

* * * * *

293.453 Worldwide Nonpresort Mail—Bundles

* * * * *

[Revise 293.453 to read as follows:]

Mailers must bundle letter-size and flat-size pieces as defined in 293.44. Letters and flats must be bundled separately, although nonidentical pieces may be commingled within each of these categories. Parcel-size pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack. Labels (facing slips) are not required on any bundles.

293.46 Sacking Requirements

[Revise the title to 293.461 to read as follows:]

293.461 Direct Country Sack (3 Pounds or More)

The following standards apply:

* * * * *

[Revise items 293.461a and b(1) to read as follows (note that we have used bold text in this article to indicate revised text, but the text in the actual revised IMM will not appear in bold):]

a. *General.* **Mailers must sack separately, items bearing customs forms from items not bearing customs forms**. When there are **3** pounds or more of mail addressed to the same country, the mail must be enclosed in a direct country sack. All types of mail, including letter-size bundles, flat-size bundles, and loose items, can be commingled in the same sack for each destination and counted toward the **3**-pound minimum, **provided items bearing a customs form are sacked separately from items not bearing customs forms**. The maximum weight of the sack and contents must not exceed 66 pounds.

b. *Direct Country Sack Tags.* For each direct country sack, the mailer must do the following:

1. Complete both sides of PS Tag 155, *Surface Airlift Mail,* which identifies the mail to ensure it receives priority handling. On the front of the tag, the mailer must identify the destination country and the foreign office of exchange code as listed in Exhibit 293.452. On the back of the tag, the mailer must specify the price group as listed in Exhibit 293.452. **In addition, mailers must apply to the tag a barcode that indicates the mailer's permit number, the product code, the service type code, the receptacle type, the destination office of exchange, and the serial number of the sack. To request technical specifications for the barcode, send an email to globalbusinesssales@usps.gov**.

* * * * *

We will publish an amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–20583 Filed 8–22–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0130, FRL 9700–4]

Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze State and Federal Implementation Plans; BART Determination for Reid Gardner Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part the remaining portion of the Nevada Regional Haze State Implementation Plan (SIP) that implements the Clean Air Act (CAA) Regional Haze Rule requiring states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas through a regional haze program. EPA is approving Nevada's selection of a nitrogen oxide (NO_X) emissions limit of 0.20 lb/MMBtu as Best Available Retrofit Technology (BART) for the Reid Gardner Generating Station (RGGS) at Units 1 and 2. EPA is disapproving two provisions of Nevada's BART determination for NO_X at RGGS: The emissions limit for Unit 3 and the compliance method for all three units. EPA is promulgating a Federal Implementation Plan (FIP) which replaces the disapproved provisions by establishing a BART emissions limit for NO_X of 0.20 lb/MMBtu at Unit 3, and a 30-day averaging period for compliance on a heat input-weighted basis across all three units. We encourage the State to submit a revised SIP to replace all portions of our FIP. Moreover, we stand ready to work with the State to develop a revised plan.

DATES: This rule is effective on September 24, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0130 for this action. Generally, documents in the docket are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. Please note that while many of the documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket and may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports or otherwise voluminous materials), and some may not be available at either locations (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, AIR–2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our,'' is used, we mean the United States Environmental Protection Agency (EPA).

Table of Contents

I. Background and Purpose
II. EPA Responses to Public Comments
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IV. Statutory and Executive Order Reviews

I. Background and Purpose

A detailed explanation of the requirements for regional haze SIPs and EPA's analysis of the Nevada Division of Environmental Protection's (NDEP) BART determination for NO_X at RGGS is provided in our Notice of Proposed Rule Making and is not restated here. *See* 77 FR 21896 (April 12, 2012).

RGGS consists of four coal-fired boilers, three of which are BART-eligible units with generating capacity of 100 megawatts (MW) each. A fourth unit (250 MW) is not BART-eligible. Nevada Energy, the owner of RGGS, performed a NO_X BART analysis for the three BART-eligible units at RGGS and submitted the results of its analysis to NDEP.[1] In its BART analysis, Nevada Energy considered several NO_X control technologies and evaluated the cost of compliance and visibility improvement associated with each technology. In preparing the SIP, NDEP relied on certain aspects of Nevada Energy's analysis while performing updated analyses for other aspects.

EPA proposed to fully approve Nevada's SIP on June 22, 2011 (*see* 76 FR 36450), but received numerous comments on our proposed approval of the BART determination for NO_X at RGGS. A detailed description of those comments is in our final rule, which approved all of the Nevada regional haze SIP, except for the BART determination for NO_X at RGGS. *See* 77 FR 17334 (March 26, 2012). After reviewing the public comments, EPA performed additional analyses of the cost-effectiveness and visibility improvement associated with the various NO_X control technologies considered by NDEP in determining BART for NO_X at RGGS. Based upon these additional analyses, EPA did not take final action on the chapters of the SIP containing the NO_X BART determination for RGGS, including the corresponding emission limits and schedules of compliance for NO_X at RGGS. Specifically, EPA did not take final action on sections 5.5.3, 5.6.3 and 7.2 of NDEP's SIP, addressing the NO_X BART control analyses, visibility improvement, and implementation at RGGS.

[1] Nevada Energy BART Analysis Reports, Reid_Gardner_1_10–03–08.pdf, Reid_Gardner_2_10–03–08.pdf, Reid_Gardner_3_10–03–08.pdf. Available in Docket Item No. EPA–R09–OAR–2011–0130–0007.

EPA published a new proposal to partially approve and partially disapprove NDEP's BART determination for NO_X at RGGS on April 12, 2012. *See* 77 FR 21896. Based on its additional analyses described above, EPA proposed revised control cost calculations for installation and operation of low NO_X burners (''LNB'') and overfire air (''OFA'') combined with either selective non-catalytic reduction (SNCR) or selective catalytic reduction (SCR) technology.[2] EPA also performed new CALPUFF visibility modeling to evaluate the visibility improvement from installing and operating LNB with OFA and either SNCR or SCR.

As discussed in detail in our responses to comments, EPA's independent modeling results showed a very small visibility improvement at the Grand Canyon National Park (GCNP) as a result of installing and operating SCR with an 85 percent reduction in NO_X on all three units. The modeled visibility improvement for this scenario was 0.38 dv at the GCNP. The incremental visibility improvement for installing LNB with OFA and SCR rather than LNB with OFA and SNCR was only 0.10 dv at GCNP.

EPA has considered the comments we received on our proposed approval and proposed disapproval. In this final action, EPA is approving NDEP's determination that NO_X BART for RGGS for Units 1 and 2 is an emissions limit of 0.20 lb/MMBtu that can be achieved by installing and operating LNB with OFA and SNCR. EPA is disapproving NDEP's NO_X BART emissions limit of 0.28 lb/MMBtu for Unit 3. EPA is also disapproving the 12-month rolling average that NDEP adopted for all three units. Concurrently, EPA is finalizing a FIP for RGGS setting a NO_X emissions limit of 0.20 lb/MMBtu for Unit 3 and a 30 successive boiler operating day (BOD) rolling NO_X emissions limit on a heat input-weighted average across all three units.[3] This represents a change to the averaging period included in our proposed action on April 12, 2012, which was based on a straight 30 calendar day average. EPA concludes that the change is a logical outgrowth of the proposal and the comments received.

EPA takes very seriously a decision to disapprove these provisions in Nevada's plan, as we believe that it is preferable that all emission control requirements needed to protect visibility be implemented through the Nevada SIP. A revised state plan need not contain exactly the same provisions that EPA has included in the FIP, but EPA must be able to find that the state plan is consistent with the requirements of the CAA. Further, EPA's oversight role requires that we assure fair implementation of CAA requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. In this instance, we believe that NDEP's NO_X BART determination for RGGS generally meets those requirements except for the specific emissions limit for Unit 3 and the compliance averaging time. As a result, EPA believes this combined approval, disapproval, and FIP is consistent with the CAA at this time, while full approval of the SIP would be inconsistent with the CAA. We look forward to working with NDEP to replace the FIP provisions with a revised SIP.

II. EPA Responses to Public Comments

EPA received written and oral comments before the close of the public comment period on June 4, 2012. We received major comments in writing from a consortium of environmental and conservation organizations[4] (''Consortium''), the National Park Service, the Nevada Division of Environmental Protection, Nevada Energy, the Moapa Band of Paiutes, Clark County Rural Democratic Caucus, and about ten individuals. We received comments from the two public hearings held near RGGS on May 3, 2012, that were attended by about 150 people, many of whom testified. We also received over 13,000 comments from mass mailings initiated by Sierra Club, National Parks Conservation Association, and CREDO Action (Rural Nevada Democratic Caucus). The comment letters, transcripts of the public testimony, and samples of the mass mailers are available for review online in Docket EPA–R09–OAR–2011–0130 at *http://www.regulations.gov.* While the written comments focus largely on the cost of compliance and degree of visibility improvement associated with SCR and SNCR, other topics are included. The oral comments provided as testimony at the public hearings focus largely on SCR and SNCR, but with an emphasis on sustaining jobs in the local community and the health issues experienced by the Moapa Band of Paiutes who live adjacent to Reid Gardner. We respond below to the full range of comments received from all sources.

A. National Consistency

Comment 1: EPA's proposed BART determination for NO_X at RGGS is inconsistent with EPA's decision to require SCR on other similar facilities including the San Juan Generating Station in New Mexico.

Response 1: It is important to note that EPA is approving Nevada's determination that the NO_X BART for RGGS is the emissions rate achievable using modern LNB with OFA and SNCR. We are approving NDEP's decision to reject requiring SCR as NO_X BART because we believe that NDEP's conclusion, that the small improvement in visibility at GCNP did not justify the cost of LNB with OFA and SCR technology, is adequately supported by the facts in this situation.[5] Congress crafted the CAA to provide for states to take the lead in developing implementation plans, but balanced that decision by requiring EPA to ensure the plans meet the requirements of the CAA. EPA's review of a SIP is not limited to a ministerial approval of a state's decisions. EPA must evaluate whether a state considered the appropriate factors and acted reasonably in doing so. In undertaking such a review, EPA does not usurp a state's authority but ensures that such authority is reasonably exercised.

The CAA and EPA's regional haze regulations set forth five factors that a state should evaluate to reach a BART determination. However, the CAA and our regulations provide flexibility to the

[2] As explained in our proposal, NDEP originally selected rotating opposed fire air (ROFA) with Rotamix™ as BART for RGGS Units 1–3, but more recently informed us that it will submit a SIP that evaluates the substitution of SNCR with LNB and OFA for ROFA with Rotamix™. 77 FR at 21898. Therefore, we are not approving NDEP's prior selection of ROFA with Rotamix™ as the control type for BART. Rather, we are approving NDEP's BART emissions limits for Units 1 and 2 of 0.20 lb/MMBtu. According to the most recent information received from NDEP, these limits can be achieved either with ROFA with Rotamix™ or with SNCR with LNB and OFA. ROFA with Rotamix™ combines a conventional SNCR system with a proprietary air and reagent injection system.

[3] Throughout the preamble we use the term ''heat input-weighted average'' in describing the 30 successive day rolling emission limit. The regulation does not actually average the data for the 3 units, but sums the total NO_X lb/hr over 30 boiler operating days and divides that total NO_X lb by the sum of the heat input over the same days. The use of the term ''heat input-weighted average'' is meant to be descriptive of the time period and of the fact that it combines all three units to determine compliance.

[4] The Consortium's comment letter was signed by representatives of Sierra Club, National Parks Conservation Association, Moapa Band of Paiutes, Citizens for Dixie's Future, Defend Our Desert, Friends of Gold Butte, Grand Canyon Trust, and Western Resource Advocates.

[5] In future discussions comparing SNCR and SCR, both technologies include use of modern LNB and OFA to meet the emission rates discussed in this rule. We will not continue to list the combustion controls separately.

state in deciding how the factors in the analysis are weighed. Moreover, for power plants that are smaller than 750 MW, our regulations allow the state to conduct a five-factor analysis that does not conform in all respects to our BART Guidelines for larger sources. *See* 70 FR 39131 (July 6, 2005).

For San Juan Generating Station and other examples cited in the comments, EPA disapproved BART determinations submitted by the states because they did not meet the CAA requirements. Under CAA section 110(c), EPA is required to promulgate a Federal Implementation Plan following disapproval of a state implementation plan submission in whole or in part. EPA's role of making the initial BART determination in a FIP is not directly comparable to EPA's role in deciding whether the state's SIP is approvable. EPA and the states generally consider the same factors in the initial BART determination but may weigh those factors differently provided the determination in each case is reasonable. BART determinations are case by case analyses. For example, in the case of San Juan Generating Station, EPA modeled very significant visibility improvement in numerous surrounding Class I areas resulting from emissions reductions associated with SCR, and thus concluded based on its five factor analysis that SCR was BART.[6] However, at RGGS, the visibility improvement from SCR compared to SNCR is very small. The units at San Juan Generating Station are also significantly larger than the units at RGGS, and the application of the BART Guidelines is mandatory when performing the five-factor analysis. This is not the case for RGGS.

NDEP on the other hand indicated that it had determined SNCR rather than SCR was NO_X BART for RGGS based on weighing the small incremental visibility improvement of SCR against its incremental cost effectiveness. When EPA reviewed NDEP's NO_X BART determination, we found problems in the method NDEP used to calculate cost-effectiveness and in the assumptions on which the modeling was based. Accordingly, EPA independently calculated cost-effectiveness and performed new modeling. In our review, EPA considered both average and incremental cost-effectiveness and visibility improvement. The results of our own analysis of the incremental visibility improvement and cost for SCR differ from NDEP's analysis in certain respects, but support NDEP's decision to establish an emissions limit that can be achieved by installing SNCR technology.

NDEP reasonably determined that NO_X emissions reductions achievable with SNCR would provide some visibility improvement at GCNP at a reasonable cost. Our decision to approve NDEP's determination that the emissions rate achievable with LNB with OFA and SNCR is NO_X BART for RGGS is consistent with other national BART SIP approvals as well as proposed FIPs and final FIPs. *See, e.g.,* 77 FR 24385 (April 24, 2012) (Final Maine SIP approval); 77 FR 24027 and 24034 (April 20, 2012) (Proposed Montana FIP); and 77 FR 20894 (April 6, 2012) (Final North Dakota FIP). Other SIPs have rejected more effective controls such as SCR if those controls were found to provide little visibility improvement relative to significant cost. *See, e.g.,* 76 FR 80754, 80758 (Dec. 27, 2011) (Final Kansas SIP approval[7]); 76 FR 16168 (March 22, 2011) (Proposed Oklahoma SIP approval[8]). Therefore, our approval of NDEP's BART determination is consistent with EPA's action on other regional haze SIPs as well as proposed and final EPA FIPs.

In summary, EPA thoroughly and independently reviewed NDEP's basis for selecting a NO_X emissions rate achievable with SNCR as BART for RGGS rather than selecting SCR. In reaching this determination, NDEP weighed the small visibility improvement against the costs of the more effective control option. EPA calculated a lower average and incremental cost-effectiveness value than NDEP. EPA's modeling relied on the regulatory version of the CALPUFF modeling system and improved meteorological inputs, and predicted much less visibility improvement at GCNP from selecting SCR as NO_X BART (average: 0.38 dv, incremental: 0.10 dv). We also evaluated the visibility improvement that would result at four other Class I areas within 300 km of RGGS. Our modeling indicated that SCR would result in only minimal improvement at these four areas. Although we found shortcomings in NDEP's cost-effectiveness and visibility improvement values, we are taking final action to approve NDEP's conclusion that the small visibility improvement does not justify the cost of requiring SCR as NO_X BART. The comment before us does not change our decision that NDEP reasonably applied the statutory and regulatory factors to determine that the NO_X BART emission rate achievable from SNCR (0.20 lb/MMBtu) is BART for RGGS.

EPA acknowledges that NDEP has greater discretion in applying the BART factors because RGGS is an electric generating unit smaller than 750 MW. In evaluating SIPs, EPA exercises judgment about SIP adequacy, not just to meet and maintain the National Ambient Air Quality Standards (NAAQS), but also to meet other requirements that do not have a specific ambient standard, such as visibility at Class I areas. In this case, Congress established a requirement for BART, and EPA is charged to assure that states meet the requirement. Here, contrary to the commenter's assertion, we are exercising judgment within the parameters laid out in the CAA and consistent with other actions nationally applying our regional haze regulations. Our interpretation of our regulations and the CAA, and our technical judgments, are entitled to deference. *See, e.g.,* Michigan Dep't. of Envtl. Quality v. Browner, 230 F.3d 181 (6th Cir. 2000); *Connecticut Fund for the Env't., Inc.* v. *EPA,* 696 F.2d 169 (2nd Cir. 1982); *Voyageurs Nat'l Park Ass'n* v. *Norton,* 381 F.3d 759 (8th Cir. 2004); *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 2012 U.S. App. LEXIS 1056 (9th Cir. January 19, 2012).

Therefore, we are finalizing our approval of NDEP's NO_X BART emissions rate of 0.20 lb/MMBtu, achievable using modern LNB with OFA and SNCR, for RGGS with two exceptions. For Unit 3, EPA is taking final action disapproving the SIP and promulgating a FIP setting the NO_X emissions limit at 0.20 lb/MMBtu. In addition, EPA is finalizing a 30 successive boiler operating day rolling NO_X emissions FIP limit on a heat input-weighted average across all three units rather than the 12-month rolling average NDEP included in its SIP, which EPA is disapproving.

B. BART Evaluation Process

Comment 2: EPA did not correctly follow the BART process for evaluating the five factors, which should have resulted in selecting SCR and an emission limit corresponding to 90 percent control of NO_X.

Response 2: EPA was not conducting a BART analysis, but was reviewing the adequacy and reasonableness of NDEP's BART analysis. NDEP noted that RGGS is not the size of a facility for which application of the BART guidelines is mandatory when performing its five-factor analysis. In evaluating the five factors, NDEP evaluated visibility

[6] Per 76 FR 503, Table 8, EPA Region 6 modeled visibility benefits of 3.11 deciviews (single Class I area with greatest impact), and 21.69 deciviews (cumulative, all Class I areas within 300 km).

[7] Jeffrey Energy Center 1 and 2, La Cygne Unit 2.

[8] EPA Region 6 proposed approval of the NO_X portions of the Oklahoma RH SIP. See Muskogee Station Unit 4 and 5, Sooner Station Units 1 and 2.

impacts by relying on visibility modeling included in the BART analysis submitted to NDEP by Nevada Energy. NDEP concluded that the small improvement in visibility that could be achieved with SCR did not justify the cost of SCR. We are generally approving the State's BART determination because we find NDEP's conclusions as to the appropriate level of BART controls to be reasonable..

NDEP did not consider a SCR system that would achieve 90 percent reduction. For SCR, NDEP assumed the technology would achieve control efficiencies of 78 to 82 percent. *See* Table 1 in 77 FR 21900 (April 12, 2012). The significance of the control efficiency assumption is that it affects the cost-effectiveness of the control technology. Cost-effectiveness ($/ton) is calculated by dividing the total annual cost ($) by the total annual tons of the pollutant reduced (tons). Assuming that two different levels of control (*e.g.,* 82 percent versus 90 percent) bear the same cost, higher control efficiency assumptions (*e.g.,* 90 percent) will result in lower cost per ton values because the denominator in the equation is larger.

In reviewing the reasonableness of NDEP's NO_X BART determination, EPA assumed a higher efficiency than NDEP. EPA determined that SCR could reduce 85 percent of the NO_X emissions from the stack exhaust. EPA continues to find that the correct assumption for the removal efficiency in this case is 85 percent rather than 90 percent. One of the factors EPA considered is that RGGS is not limited in its coal purchase by a contract. RGGS may purchase coal on the spot market, meaning that the rank [9] and nitrogen content of the coal combusted may vary. Bituminous coals from Utah have a very high btu per pound, which leads to higher NO_X produced during combustion. Coals with high nitrogen content also produce more NO_X when combusted.[10] Since RGGS has access by rail line to a number of different ranks of coal with varying nitrogen, these factors can affect the emission level that can be achieved with the SCR.

Assuming *arguendo* that EPA agreed with the comment that SCR should achieve 90 percent reduction continuously, we would not necessarily change our decision to approve NDEP's BART determination. As noted above, 90 percent control efficiency assumption would lead to a lower average and incremental cost-effectiveness. Even with that, NDEP's BART determination may have been reasonable based on weighing the small incremental visibility improvement of SCR against its incremental cost effectiveness. However, that issue was not before EPA in this action since EPA determined that only 85% reduction could be assumed in this case.

Comment 3: The commenter states that EPA did not follow the two-step process described in 40 CFR 51.301, which involves first identifying the best control technology for reducing NO_X and then applying the five factors to determine the best emissions limit achievable by that technology. A different emission limit should be chosen only if the technology fails to meet one of the five factors. Instead, EPA provided a list of all feasible methods to remove NO_X, ranked from least effective (worst) to most effective (best) based on their NO_X control efficiency. In sorting through the ranked list of control options to pick the BART control technology, the EPA started at the bottom, with the worst control, and moved up to the best control, thus corrupting the entire process.

Response 3: We reiterate that EPA was not conducting a BART determination for NO_X at RGGS. Rather, we were reviewing the adequacy of NDEP's BART analysis. NDEP noted, correctly, that RGGS is not the size of a facility for which application of the BART Guidelines is mandatory.

The process described in the comment is comparable to the process for determining Best Available Control Technology (BACT) established in the Prevention of Significant Deterioration regulations. The states, however, are not required to use a top-down BACT process for making a BART determination. EPA stated in its final BART rule that, ''States should retain the discretion to evaluate control options in whatever order they choose, so long as the State explains its analysis of the CAA factors.'' *See* 70 FR 39130 (July 6, 2005). NDEP's determination to eliminate SCR from consideration as BART was based on weighing the small incremental visibility improvement from SCR against its incremental cost-effectiveness. This decision is within the discretion that a state can exercise in evaluating BART because it considered the appropriate factors and came to a reasonable determination, especially in this case which was not required to meet all aspects of EPA's BART guidelines.

Comment 4: The proposal does not demonstrate that a NO_X limit of 0.05 lb/MMBtu on a 30-day rolling average basis using SCR has any adverse impacts when subjected to a site-specific, case-by-case, five-factor analysis.

Response 4: The comment does not set forth the appropriate standard for a BART analysis. The process described by the commenter is analogous to a top-down control technology review conducted when determining the BACT for new major stationary sources or major modifications at existing stationary sources. As stated in Response 3, states are not required to use a top-down BACT process for making a BART determination, and states retain discretion to evaluate control options in whatever order they choose, as long as the state explains its analysis of the CAA factors.

NDEP applied the five-factor BART analysis for NO_X at RGGS. NDEP weighed the five factors and concluded that the small visibility improvement expected from installation of SCR did not justify the incremental cost of SCR. EPA independently and thoroughly evaluated NDEP's determination. EPA also considered both average and incremental cost effectiveness as well as visibility improvement. Although we disagree with NDEP's calculation of the cost effectiveness of SCR compared to SNCR, our modeling analysis has demonstrated that the visibility improvement from SCR is very small at GCNP. The visibility improvement from SCR is only 0.38 dv, and the incremental visibility improvement between SCR and SNCR is only 0.10 dv. The annualized cost of SNCR is approximately $1.02 million per unit, and the annualized cost of SCR is approximately $3.8 million per unit, making it four times as expensive as SNCR.[11] NDEP's determination that NO_X BART is an emissions rate that is achievable with SNCR is reasonable based on its weighing of the small visibility improvement against the cost of SCR.

Comment 5: The statute and regulations do not require EPA to compare the best technology to the next best technology, and then reject the best technology based on incremental differences.

Response 5: EPA was not conducting its own BART analysis but was

[9] Coal rank: The classification of coals according to their degree of progressive alteration from lignite to anthracite. In the United States, the standard ranks of coal include lignite, subbituminous coal, bituminous coal, and anthracite and are based on fixed carbon, volatile matter, heating value, and agglomerating (or caking) properties. *http://205.254.135.7/tools/glossary/index.cfm?id=C.*

[10] *Journal of the Air & Waste Management Association,* Volume 55, September 2005, Nitrogen Oxides Emission Control Options for Coal-Fired Electric Utility Boilers.

[11] EPA cost estimates, as listed in Appendix B of the TSD to our April 4 proposed action [Appendix B—Control Cost Estimate Revisions (September 2011 updated estimates)].

reviewing the adequacy of NDEP's BART analysis. We agree with the commenter that the CAA and regional haze regulations do not require the state to reject the best technology based on incremental differences. However, we note that the state has the discretion to compare the incremental cost-effectiveness and incremental visibility improvement that will result from various technologies. *See* 70 FR 39129 (July 6, 2005). The state must evaluate the differences between control technologies reasonably and provide a justification for rejecting a technology. For the RGGS NO_X BART determination, we are finalizing our approval of NDEP's elimination of SCR as BART based on the small visibility improvement that would result at the GCNP weighed against its cost-effectiveness. In addition, NDEP noted that RGGS is the size of a facility for which application of the BART Guidelines is not mandatory. Thus, EPA concluded that NDEP's NO_X BART determination was reasonable.

Comment 6: EPA's consideration of the incremental visibility improvement between SCR and SNCR is contrary to law because there is no incremental visibility factor.

Response 6: We disagree with the comment that considering incremental visibility improvement is prohibited by the CAA or our regulations. The CAA and our regional haze regulations specify that the states or EPA must consider cost and visibility in the five-factor analysis. With respect to the cost factor, in promulgating the BART Guidelines, EPA responded to a comment stating: ''In addition, the guidelines continue to include both average and incremental costs. We continue to believe that both average and incremental costs provide information useful for making control determinations.'' *See* 70 FR 39127 (July 6, 2005). The commenter did not cite any regulatory language that would preclude incremental cost effectiveness in considering the cost of compliance. With respect to using incremental visibility improvement, EPA's response to comments on promulgating the BART guidelines stated:

> For example, a State can use the CALPUFF model to predict visibility impacts from an EGU in examining the option to control NO_X and SO_2 with SCR technology and a scrubber, respectively. A comparison of visibility impacts might then be made with a modeling scenario whereby NO_X is controlled by combustion technology. If expected visibility improvements are significantly different under one control scenario than under another, then a State may use that information, along with information on the other BART factors, to inform its BART determination. *See* 70 FR 39129 (July 6, 2005).

EPA's regulations allow states to compare incremental cost-effectiveness and visibility improvements between different technologies. The incremental visibility benefit is one way to compare the visibility improvements from various controls. For this BART determination, NDEP weighed the small incremental visibility improvement against the incremental cost effectiveness. Based on weighing these factors, NDEP provided a reasoned justification for choosing SNCR technology as NO_X BART for RGGS. EPA's independent analysis indicates that NDEP properly exercised its discretion in its process for weighing the small visibility improvement against the cost-effectiveness to reject SCR.

C. BART Selection Criteria

Comment 7: EPA did not provide the public with the criteria for making its BART determination, which appears inconsistent with the BART Guidelines and the intent of the Regional Haze Rule.

Response 7: As noted previously, EPA was not conducting its own BART analysis. We were reviewing the adequacy of NDEP's BART analysis. NDEP correctly noted that RGGS is not the size of a facility for which application of the BART Guidelines is mandatory.

After receiving significant comments on our initial proposed rule (76 FR 36450), EPA independently and thoroughly reviewed NDEP's NO_X BART determination and concluded that NDEP provided the public with information regarding the criteria it was applying in making its BART determination. See ''Revised NDEP BART Determination Review of NV Energy's Reid Gardner Generating Station Units 1, 2 and 3'' revised October 22, 2009. NDEP adequately informed the public about the basis for its NO_X BART determination for RGGS, stating: ''NDEP concluded, based on a review of the economic analysis, that the $/ton of NO_X removed increased significantly for the LNB with OFA and SNCR, and ROFA with SCR technologies without correspondingly significant improvements in visibility.'' *Id.* page 6. We are approving NDEP's determination that NO_X BART for RGGS is an emissions rate that is achievable by installing and operating LNB with OFA and SNCR because NDEP reasonably weighed the small incremental visibility improvement that would result from installation of SCR against its higher cost. NDEP adequately disclosed the factors it considered in its BART determination.

Comment 8: EPA fails to explain what level of incremental cost or visibility improvement would justify SCR. EPA should disclose the dollar limit and rationale for what constitutes ''cost effectiveness,'' and how its method is consistently applied across other facilities and states.

Response 8: EPA's approval of NDEP's BART determination is based on finding that the State adequately considered the appropriate factors for BART and provided a reasonable explanation for selecting a NO_X emissions rate that can be achieved with SNCR. NDEP explained that requiring SCR technology would result in a small incremental visibility improvement over SNCR when weighed against the incremental cost-effectiveness of SCR. As stated in our proposed approval, our modeling analysis was performed ''in a manner that more closely adheres with current EPA regulatory guidance on CALPUFF modeling.'' *See* 77 FR 21903 (April 12, 2012). Our analysis found that the average and incremental visibility improvement would be significantly lower than the visibility improvement relied upon by NDEP. In addition, EPA's revised cost analysis also indicated lower cost per ton of pollutant removed for SCR. In our analysis, we evaluated the cost-effectiveness of both technologies (SCR and SNCR with LNB and OFA) based on using the Control Cost Manual (CCM) for including appropriate costs.

Our modeling shows that there would be a very small improvement in visibility at the GCNP from using SCR at RGGS. Based on this analysis we have determined that we can approve NDEP's determination that RGGS is required to comply with a NO_X emissions rate that can be achieved with SNCR as BART. Although the values that EPA considered for cost-effectiveness and visibility improvement differ from NDEP's analysis, we conclude NDEP's analysis reasonably weighed the small visibility improvement against the cost to eliminate SCR.

One comment faults EPA, stating: ''EPA further fails to explain what level of incremental cost or visibility improvement would justify the incremental cost.'' *See* Consortium Letter at page 6. EPA's BART guidelines did not establish bright-line thresholds for cost-effectiveness or visibility improvement, choosing to allow the states to exercise discretion to choose such values when appropriate. EPA stated:

> We agree with the suggestion that the use of a comparison threshold, as is done for determining if BART-eligible sources should be subject to a BART determination, is an appropriate way to evaluate visibility improvement. However, we believe the States have flexibility in setting absolute thresholds, target levels of improvement, or de minimis levels since the deciview improvement must be weighed among the five factors, and States are free to determine the weight and significance to be assigned to each factor. For example, a 0.3, 0.5 or even 1.0 deciview improvement may merit stronger weighting in one case versus another, so one 'bright line' may not be appropriate. *See* 70 FR 39129 (July 6, 2005).

The same rationale should apply to cost-effectiveness. A bright line for cost-effectiveness may not be appropriate for every case and is dependent on case specific factors relating to economics and technology. In this case-by-case determination, the small amount of visibility improvement did not justify the cost of SCR.

Comment 9: EPA should explain the amount of incremental visibility improvement from SNCR to SCR that would justify the incremental cost increase of SCR, since no threshold is established in rulemaking or guidance.

Response 9: EPA is not setting generally applicable thresholds for incremental cost-effectiveness or visibility improvement for the reasons discussed above. EPA's BART Guidelines established presumptive emissions limits for SO_2 and NO_X at electric generating units at facilities generating more than 750 MW. But EPA did not extend those presumptive emissions limits to electric generating units at smaller facilities, such as RGGS.

EPA did not establish presumptive cost-effectiveness or visibility improvement values. EPA left weighing the factors to the state providing the state considered the five factors and exercised its discretion reasonably. Here, EPA proposed to find that NDEP reasonably eliminated SCR when it weighed the cost-effectiveness against the small incremental visibility improvement associated with requiring SCR rather than SNCR.

BART is a case-by-case analysis that is initially evaluated by the states. Provided the state exercises its discretion reasonably and meets the requirements of the CAA and regulations, EPA may approve it. EPA's approval is not a ministerial act. In this rulemaking, EPA has carefully reviewed the basis for NDEP's determination. There is no reason, and none is provided in the comment, to support the assertion that EPA should establish thresholds for cost-effectiveness or visibility improvement, or challenge EPA's authority to approve a BART determination without them.

Comment 10: EPA's use of incremental visibility improvement to find that the cost of SCR is unjustified contradicts its finding that SCR is cost-effective (77 FR 21901).

Response 10: The commenter mischaracterizes EPA's proposed approval. The commenter is correct that we did not find the average and incremental cost-effectiveness of SCR to be cost prohibitive. Nevertheless, our evaluation supported NDEP's determination that the small amount of visibility improvement at GCNP did not justify the cost of SCR.

The comment states that EPA has invented a ''sixth factor'' by ''concatenating incremental visibility and incremental cost.'' *See* Consortium Letter, page 7. EPA has not invented an additional factor in the BART analysis but has approved a reasonable conclusion reached by NDEP when it weighed these two factors. NDEP's weighing two factors in the analysis does not create a sixth factor. The comment does not explain how weighing two factors in the five-factor analysis constitutes stringing together and joining those factors into a sixth factor.

National Parks Conservation Association and Sierra Club wrote to EPA on June 29, 2012, concerning several regional haze actions. We are treating this letter as a late comment on our proposed action and including it in our docket as such. This letter indicates that NPCA and Sierra Club understand that our approval is based on finding that NDEP reasonably weighed visibility improvement and cost-effectiveness rather than inventing an additional BART factor. The letter provides:

> In many cases, EPA has summarily concluded that the incremental costs of concededly superior controls are not warranted by the visibility benefits determinations, which are routinely at odds with the Agency's own analysis demonstrating that installing the most effective controls will yield needed visibility improvements. *See* Letter dated June 29, 2012, page 1.

EPA's analyses are also based on weighing the five BART factors. The relative weight of the cost-effectiveness and visibility improvement varies depending on the facility at issue. For the three 100 megawatt units at RGGS, EPA concludes that notwithstanding differing conclusions about both cost and visibility improvement, NDEP reasonably determined that a small visibility improvement at GCNP does not justify the cost of SCR. Our approval of NDEP's NO_X BART determination on this basis is consistent with our actions on other regional haze SIPs. *See, e.g.,* 77 FR 24385 (Apr. 24, 2012) (Final Approval of Maine SIP).

D. Cost Analysis

Comment 11: The incremental cost difference between SCR and SNCR is less than EPA estimated because the cost of SCR is overestimated and the cost of SNCR is underestimated, making SCR look relatively more expensive than is the case.

Response 11: The comment does not provide any basis for EPA to revise its proposed approval of NDEP's NO_X BART determination. Our proposal stated:

> Based on our revised cost estimates, we do not consider these [EPA's] average and incremental cost effectiveness values for SCR and LNB and OFA as cost prohibitive. Our analysis of this factor indicates that costs of compliance (average and incremental) are not sufficiently large to warrant eliminating SCR from consideration. The incremental cost effectiveness values for Units 1 and 2 are around $4,500/ton. Although EPA does not consider this incremental cost prohibitive, we note that the State has certain discretion in weighing this cost. Because RGGS is not a facility over 750 MW and therefore not subject to EPA's presumptive BART limits, the State may exercise its discretion more broadly in this particular determination. *See* 77 FR 21901 (April 12, 2012).

Even if the average and incremental cost-effectiveness between SCR and SNCR were somewhat different, NDEP's BART determination would still be approvable based on its reasonable weighing of the cost and visibility improvement factors.

Comment 12: EPA incorrectly estimated the cost-effectiveness of SCR (i.e., dollars per ton of emissions removed on an annual basis) by assuming that SCR can achieve an annual average emission no lower than 0.083 to 0.098 lb/MMBtu, despite substantial evidence that SCR can achieve 0.05 lb/MMBtu or lower on an annual basis.

Response 12: EPA disagrees with this comment. Regarding the accuracy of the cost effectiveness calculations of SCR, the commenter is correct that we estimated cost-effectiveness of SCR based on annual average emission rates ranging from 0.083 to 0.098 lb/MMBtu. However, we indicated in our proposal that we did not find SCR to be cost prohibitive at these emission rates. As a result, although we did consider more stringent SCR emission rates, such as 0.06 lb/MMBtu, when evaluating visibility improvement, we did not also revise our cost estimates to reflect the more stringent SCR emission rates, since we had already indicated that did not

find SCR to be cost prohibitive at the less stringent SCR emission rates. It would not have been in any way determinative to our decision to find that SCR was ''even more'' cost-effective or that the incremental cost-effectiveness value between SCR and SNCR was ''even more'' incrementally cost-effective.

Regarding the emission rate achievable by SCR, the BART Guidelines state that: ''[i]n assessing the capability of the control alternative, latitude exists to consider special circumstances pertinent to the specific source under review, or regarding the prior application of the control alternative'' (70 FR 39166, July 6, 2005).[12] In other words, the BART emission limits are not required to represent the maximum level of control ever achieved by a given technology. Limits set as BACT under the PSD program, or emission rates achieved from the operation of individual facilities under an emission trading program (e.g., Clean Air Interstate Rule), may provide important information, but should not be construed to automatically represent the most appropriate BART limit for all facilities.

The coal composition is also an important component of estimating the NO_X emissions rate that a facility can achieve. RGGS is capable of purchasing coal on the spot market so there is likely to be variability in the NO_X emissions rate that would be achievable with SCR or SNCR. As previously discussed in the response to Comment 2, RGGS receives its coal by rail line and has access to different ranked coals with varying nitrogen content, which influence the NO_X concentration in the exhaust going to either SNCR or SCR controls. EPA's policy is to set an emission limit that would reasonably accommodate the various coal sources under these circumstances.

EPA disagrees with this comment, but even if we accepted the premise that RGGS is capable of continuously meeting an emission limit of 0.05 lb/MMBtu, the comment does not provide any basis for EPA to change our approval of NDEP's SIP or our FIP. Assuming the cost of achieving 0.05 lb/MMBtu was equal to the cost of achieving 0.083 to 0.098 lb/MMBtu, using a NO_X emissions rate of 0.05 lb/MMBtu for SCR would likely result in lower average and incremental cost per ton values. Thus, we would calculate SCR to be more cost-effective (i.e., lower dollars per ton) on an average and incremental basis. As stated above, EPA did not determine the average or incremental cost of SCR to be prohibitive. Rather, EPA's approval of NDEP's determination that NO_X BART for RGGS for Units 1 and 2 is an emissions limit of 0.20 lb/MMBtu that can be achieved by installing and operating LNB with OFA and SNCR is based on our determination that NDEP reasonably weighed the visibility improvement against the other factors in rejecting SCR. EPA does not believe this analysis would be significantly altered by slightly lower incremental cost numbers.

Comment 13: EPA did not correct all the errors in the State's cost calculations for SCR (e.g., lack of multiple unit discounts, high reagent costs, incorrect capital recovery factor), which would have further reduced the cost and improved the cost effectiveness of SCR, thereby reducing the incremental cost difference with SNCR.

Response 13: EPA partially agrees with this comment. EPA's revised cost-effectiveness values are consistent with EPA's regulations and the parameters set forth in the CCM. EPA explained in promulgating the BART Guidelines that ''[s]tates have flexibility in how they calculate costs.'' *See* 70 FR at 39127 (July 6, 2005). A state may deviate from the Control Cost Manual provided its analysis is reasonable. EPA independently evaluated NDEP's cost-effectiveness calculation, stating in our proposal:

> We received several public comments that NDEP's cost calculations were overestimated and based on methodology inconsistent with EPA's Control Cost Manual (CCM). [footnote omitted]. We agree that NDEP included inappropriate costs and our analysis excludes those costs that are not allowed by the CCM. *See* 77 FR 21901 (April 12, 2012).

Our proposal noted that we did not revise the cost-effectiveness calculation to adjust for all of the discrepancies with the CCM because based on our initial adjustments we found that SCR was not cost-prohibitive. It would not have been in any way determinative to our decision to find that SCR was ''even more'' cost-effective or that the incremental cost-effectiveness value between SCR and SNCR was ''even more'' incrementally cost-effective.

As discussed above, EPA is approving NDEP's determination that NO_X BART is an emissions limit achievable with SNCR rather than SCR. The basis for our approval is that when NDEP weighed the small visibility improvement of moving from an emissions limit achievable with SNCR to one based on SCR against the incremental cost-effectiveness of SCR, NDEP determined that NO_X BART for RGGS for Units 1 and 2 is an emissions limit of 0.20 lb/MMBtu that can be achieved by installing and operating LNB with OFA and SNCR. NDEP has discretion in determining how to weigh the factors in reaching a BART decision under the CAA and regional haze regulations. NDEP's rationale for its decision, although based on different values than EPA calculated and modeled, was reasonable. Therefore, EPA is approving NDEP's determination.

The comment implies that correcting each of the costs listed as incorrect and substituting a SCR emissions limit of 0.05 lb/MMBtu rather than 0.06 lb/MMBtu for SCR would yield a very low incremental cost difference between SCR and SNCR. However, that implication is not supported by the comment. The comment does not calculate an alternative average or incremental cost-effectiveness differential between SCR and SNCR. Therefore, EPA is approving NDEP's conclusion that the incremental cost-effectiveness is not justified when weighed against the small visibility improvement.

Comment 14: EPA did not consider the adverse non-air quality impacts of SNCR due to ammonia injection, which would increase the cost of SNCR and reduce the incremental cost difference with SCR.

Response 14: As noted previously, EPA was reviewing the State's BART determination to evaluate whether NDEP reasonably applied the requirements of the CAA and the regional haze regulations. EPA anticipates that ammonia emissions will be quite low because these units are equipped with baghouses and wet scrubbers that each can be expected to remove most ammonia slip associated with SNCR or SCR. To the extent the commenter is concerned that considering costs due to ammonia injection would lower the incremental cost-effectiveness value between SCR and SNCR, EPA reiterates that our proposed approval of NDEP's RGGS NO_X BART determination is not based on agreeing with NDEP that SCR is not cost-effective. EPA's proposed approval states that SCR is cost-effective. Nonetheless, the BART determination is a multiple-factor analysis. NDEP has discretion to determine how to weigh the factors. Our independent analysis of the two critical factors demonstrated that the NDEP reasonably weighed the cost of SCR controls against the small visibility improvement to determine that SNCR is NO_X BART for RGGS.

[12] Although NDEP's BART analysis for RGGS need not conform to the BART guidelines because the capacity of RGGS is smaller than 750 MW, the BART guidelines do provide useful guidance in setting appropriate BART limits.

Comment 15: In determining the average and incremental cost-effectiveness, EPA should have used actual emissions for the baseline value of each unit rather than each unit's annualized maximum permitted heat input multiplied by each unit's maximum permitted NO_X limit, which is closer to the potential to emit (PTE).

Response 15: EPA disagrees with this comment. Again, we note that EPA was not performing its own BART analysis, but was reviewing the adequacy of NDEP's BART analysis. The commenter is correct in noting that, in our review of NDEP's evaluation of the cost of compliance, we did not modify the estimate of baseline annual emissions that NDEP used in its cost calculations. We agree that NDEP's baseline more closely represents the sources' PTE, and results in higher baseline annual emissions than the methodology proposed by the commenter, which would rely almost entirely on past actual annual emissions. Because the regional haze regulations and BART Guidelines are not prescriptive regarding the calculation of baseline emissions, stating that ''the baseline emissions rate should represent a realistic depiction of anticipated annual emissions for the source'' [13], the commenter's proposed methodology is a potentially acceptable way to calculate baseline annual emissions. NDEP used a methodology that resulted in a higher estimate of baseline annual emissions, and we consider the methodology used by NDEP to be within the discretion afforded to states.

E. Cost of Compliance

Comment 16: Use of EPA's *Air Pollution Control Cost Manual* (''CCM'') is not required since RGGS is less than a 750 megawatt facility.

Response 16: EPA agrees that the states are not required to use the CCM for electric generating units smaller than 750 MW but that it is generally a good guide concerning costs to include and exclude. EPA performed an independent average and incremental cost-effectiveness calculation using the CCM to evaluate whether NDEP had reasonably weighed small visibility improvements against the incremental cost-effectiveness of requiring SCR rather than SNCR. EPA's analysis resulted in different cost-effectiveness and visibility improvement values. Although the values for these factors differed from NDEP's values, our analysis supported approving NDEP's NO_X BART determination to establish an emissions limit of 0.20 lb/MMBtu achievable from installing and operating SNCR.

Comment 17: EPA's *Air Pollution Control Cost Manual* is out of date, and thus substantially underestimates current market costs of control technologies including SCR, which misrepresents the cost-effectiveness of chosen technologies.

Response 17: EPA disagrees with the comment. The CCM is a valuable resource to guide the states in evaluating costs that should be included or excluded. The states have discretion to rely on specific capital and annual cost information that is updated or specific to the facility under consideration.

F. Visibility Analysis

Comment 18: EPA underestimated the visibility improvement that would result from SCR by assuming an emissions limit of 0.06 lb/MMBtu (about 84 percent efficiency) instead of 0.05 lbs/MMBtu (about 90 percent efficiency) or lower, which was achieved at 21 coal-fired EGUs in 2011, 11 of which are dry-bottom, wall-fired units like RGGS.

Response 18: EPA disagrees with this comment. As noted previously, the purpose of EPA's independent analyses assessing anticipated visibility improvements and cost-effectiveness of SCR were to evaluate the reasonableness of NDEP's determination based on weighing small incremental visibility improvement against the incremental cost-effectiveness of SCR. The modeling that NDEP relied on assumed that SCR would reduce NO_X between 78 percent and 82 percent. Although NDEP's assumptions for SCR performance were within the range of emission rates achieved nationwide, EPA determined that for the purposes of visibility modeling and calculating cost-effectiveness of SCR, assuming an 85 percent reduction efficiency to meet an emissions limit of 0.06 lb/MMBtu was reasonable for RGGS. As noted by the commenter, other coal-fired facilities do achieve emission rates of 0.05 lb/MMBtu or lower, and some BART determinations have established a NO_X emission limit of 0.05 lb/MMBtu for SCR. However, as noted in Response 12, emissions information reported to EPA's Clean Air Markets program show that among coal-fired boilers operating with SCR nationwide, there is significant variability in actual NO_X emission rates achieved, ranging from below 0.05 to greater than 0.10 lb/MMBtu.

EPA's assumption that RGGS could meet an emission limit of 0.06 lb/MMBtu is reasonable and within the expected performance range of SCR. The commenter does not provide a basis, *e.g.,* modeling that compares visibility benefits expected from a NO_X limit of 0.05 versus 0.06 lb/MMBtu, to change our approval of NDEP's determination that NO_X BART for RGGS is an emissions limit of 0.20 lb/MMBtu that can be achieved by installing and operating LNB with OFA and SNCR for the three units at RGGS. EPA anticipates that even if we modeled SCR to achieve 0.05 lb/MMBtu instead of 0.06 lb/MMBtu, the visibility benefits of SCR would still be smaller than the benefits modeled by NDEP. For example, if the post-SCR impact at GCNP is scaled by 0.05/0.06, it decreases from 0.20 dv to 0.17 dv. Relative to the 0.59 dv base case impact, the benefit of SCR would correspondingly increase from 0.38 dv to 0.42 dv, roughly 10 percent higher. However, as discussed in the Technical Support Document (''TSD'') for our proposed rule, EPA's estimates of visibility impacts are more than 50 percent lower than those relied on by NDEP due to differences in modeling procedures. The net effect of using 0.05 lb/MMBtu as the NO_X emissions factor would not change the fact that EPA's estimate of SCR's benefit would remain substantially smaller than that estimated by NDEP. As noted in previous responses, NDEP determined that the visibility benefits of SCR based on its modeling do not justify the cost. Thus, additional modeling of SCR at a lower emission rate is not likely to change NDEP's consideration of the visibility factor, or our determination that NDEP's process for weighing the factors is reasonable.

Comment 19: The small visibility improvement from SCR is the result of underestimating the base case emissions and the amount of NO_X that could be removed by SCR. The commenter provided an alternative, larger estimate of SCR benefits by scaling the EPA modeling results.

Response 19: EPA disagrees with this comment. EPA performed an independent modeling analysis to ensure NDEP's NO_X BART determination was reasonable. Although estimates of the visibility improvement would be larger if EPA had used higher base case emissions, the scaling method used by the commenter does not accurately reflect the effect of a different base case, which would require new modeling. Even if the commenter's scaling method results were accurate, the estimated visibility improvement remains small. The scaled benefits of SCR provided by the commenter are 0.7 dv at GCNP, and 1.9 dv cumulatively over the five Class I areas; the comparable scaled figures for SNCR would be 0.4 dv and 1.1 dv

[13] 70 FR 39167, July 6, 2005.

cumulatively. Thus, using the commenter's method, the incremental visibility improvement of SCR over SNCR would be 0.3 and 0.8 cumulatively. This is only slightly larger than the EPA-estimated benefit increase of 0.2 dv at GCNP, and is the same as the EPA-estimated benefit increase of 0.8 dv cumulatively. EPA's decision to approve NDEP's BART determination would be unchanged. See also the response to comment 20.

Comment 20: A commenter states that EPA used NDEP's NO_X baseline emission rates and control scenario emission rates to determine modeled visibility impacts. Because NDEP's emission rates are based on an annual average instead of a maximum 24-hr average, the commenter alleges that EPA underestimated visibility impacts, and provides its own estimate of 24-hr average baseline and control scenario emission rates.

Response 20: We acknowledge that we used NDEP's baseline and control scenario emission rates, based on annual average emission factors, in the visibility modeling supporting our proposed approval. As noted in our proposal, NDEP modified the baseline emission rates and control scenario emission rates that Nevada Energy included in the BART analysis.[14] NDEP did not, however, perform updated modeling to determine the visibility improvement associated with the revised baseline emission rates and revised control scenario emission rates. The absence of modeling results complicated our ability to evaluate the adequacy of NDEP's analysis. To evaluate the adequacy of NDEP's analysis, we performed our visibility modeling using NDEP's revised baseline and revised control scenario emission rates. Again, the purpose of our modeling was to evaluate the adequacy of NDEP's analysis which is not directly comparable to any modeling decisions we might make in our own BART determination as part of a FIP, such as at San Juan Generating Station.

Regarding the use of control scenario emission rates based upon annual average emission factors (in lb/MMBtu) instead of 24-hour average emission factors (lb/MMBtu), we disagree with the commenter that these emission rates do not provide acceptable estimates of visibility benefits. The methodology for calculating control scenario model emission rates described by the commenter involves applying the estimated control efficiencies of a particular technology to the baseline (pre-control) model emission rate. While this methodology has been used by EPA, it does not preclude the use of other methodologies for calculating control scenario emissions. In the case of control technology performance, engineering estimates of a particular technology's post-control level of performance will often be expressed in terms of lb/MMBtu, either on a 30-day or annual average basis. To the extent that the engineering estimate represents a more accurate depiction of future anticipated emissions at a particular facility, it may be appropriate to rely on the specified post-control level of performance rather than on a control efficiency applied to a pre-control emission rate. In fact, using model emission rates based on an annual average, instead of a 24-hour average, results in more stringent emission rates. As an example, the RGGS Unit 1 model emission rate calculated by the commenter for SCR and LNB with OFA is 99 lb/hr.[15] By comparison, the RGGS Unit 1 model emission rate used by EPA for this same technology is 73 lb/hr.[16]

Regarding the use of baseline emission rates based upon the annual average maximum instead of the 24-hour average maximum, we agree with the commenter that the BART guidelines state: ''Use the 24-hour average actual emission rate from the highest emitting day of the meteorological period modeled (for the pre-control scenario).'' *See* 70 FR 39170 (July 6, 2005). We note, however, that because the capacity of RGGS is less than 750 MW, NDEP is not required to adhere to the BART guidelines, and is therefore afforded some flexibility when evaluating the five statutory factors in its analysis of RGGS. We disagree that the maximum 24-hour average baseline emissions the commenter provided are representative of RGGS' historical performance.[17] The baseline emissions provided by the commenter include a period of malfunction extending from January 8, 2003 to March 27, 2003. The result is maximum 24-hour average values that overstate RGGS' emission rate, and would therefore also overstate its visibility impact. If examining baseline emissions on a 24-hour average basis, we consider the WRAP NO_X emission rates indicated by the commenter to be more representative of maximum 24-hr average emissions,[18] and note that these emission rates were included in our modeling analysis as Scenario c02.

The commenter also provides scaled estimates of visibility benefit based upon its estimates of 24-hour average baseline and control scenario emission rates. Notwithstanding our disagreements with the commenter noted above, if we use the WRAP's maximum 24-hour average emission rate as the baseline instead of the NDEP baseline, and scale our control scenario visibility benefits accordingly, we estimate the following visibility improvement at Grand Canyon National Park:[19]

Scenario	Original			Scaled		
	Visibility impact	Visibility improvement		Visability impact	Visibility improvement	
		Total (from baseline)	Incremental (from prev)		Total (from baseline)	Incremental (from prev)
	dv	dv		dv	dv	
Baseline NO_X LNB+OFA	0.59			0.74		
Enh. LNB+OFA	0.51	−0.08	*−0.08*	0.64	−0.10	−0.10
SNCR+LNB+OFA	0.37	−0.21	*−0.13*	0.47	−0.27	−0.17
ROFA+Rotamix	0.31	−0.28	*−0.06*	0.39	−0.35	−0.08
SCR+LNB+OFA	0.22	−0.36	*−0.09*	0.28	−0.46	−0.11

[14] 77 FR 21903.

[15] See Table 13, National Park Service comment letter dated June 4, 2012, from Susan Johnson (NPS) to Thomas Webb (EPA).

[16] As used in Model Scenario c16 that is based on the more stringent level of SCR+LNB+OFA performance of 0.06 lb/MMBtu. See Technical Support Document, Appendix C, Docket Item No. EPA–R09–2010–0130–0077–11 and –15.

[17] Column 2 in Tables 11, 13, 15, National Park Service comment letter dated June 4, 2012, from Susan Johnson (NPS) to Thomas Webb (EPA).

[18] Column 6, Table 11, *ibid.*

[19] Based on Visibility Method 8, best 20 percent days background, as summarized in Appendix E of the TSD from our April 4, 2012 proposed action. [Appendix E—RGGS_TSD_CALPUFF_tables.xls]

Scenario	Original			Scaled		
	Visibility impact	Visibility improvement		Visability impact	Visibility improvement	
		Total (from baseline)	Incremental (from prev)		Total (from baseline)	Incremental (from prev)
SCR+LNB+OFA (0.06 lb/MMBtu)	0.20	−0.38	*−0.10*	0.26	−0.48	−0.13

As seen above, the scaled incremental visibility benefit of SCR (at 0.06 lb/MMBtu) compared to the next most stringent technology, ROFA w/Rotamix, is 0.13 deciviews, whereas the original EPA-estimated incremental visibility benefit is 0.10. This magnitude of incremental visibility benefit is still sufficiently small to justify approval of NDEP's analysis.

G. Cumulative Visibility Benefit Analysis

We are providing a consolidated response to the following comments.

Comment 21: EPA based its BART determination on the visibility benefits of SCR at a single Class I area that has the maximum visibility impact, but should have considered cumulative impacts.

Comment 22: EPA did not consider the cumulative visibility benefits of SCR at all five Class I areas within 300 kilometers that are impacted by NO_X emissions from RGGS, in contrast to performing a cumulative visibility benefit analysis for Four Corners Power Plant and Navajo Generating Station.

Comment 23: EPA modeled the cumulative benefits of various BART controls across all five Class I areas as indicated in Appendix E, but did not include its cumulative modeling results in its proposed rule or TSD.

Comment 24: EPA's modeling results for SCR at all five parks in Appendix E showed a cumulative visibility benefit of 1.07 dv to 1.15 dv, which is significantly greater than the 0.38 dv benefits at GCNP alone.

Comment 25: NPS calculates that the cumulative visibility benefits at five class I areas is about 2.0 dv for SCR on all three units.

Response 21–25: Although EPA did not provide the cumulative sum of visibility impacts over the five nearby Class I areas in the Notice of Proposed Rulemaking, EPA did in fact take into account the impacts at all those areas, considering both the number of areas affected and the impacts and benefits occurring there. EPA provided the modeled visibility impacts and benefits at all five Class I areas in Appendix E of the Technical Support Document. We did not rely on the specific metric advocated by the commenters, i.e. the sum of benefits over the areas, but we did consider the estimated visibility impacts across all five Class I areas in evaluating the reasonableness of Nevada's BART determination. Given the magnitude of the impacts at these areas, however, we focused largely on the benefits at GCNP in our proposed action and placed little weight on the benefits at the remaining four Class I areas. The commenters note that the sum of the visibility benefits across all five impacted Class I areas from requiring SCR is just over 1 dv of improvement. However, as that improvement is spread out over five Class I areas, we do not consider this sufficient reason to reject the State's BART determination, especially in light of the incremental benefits of SCR. On a Class I by Class I basis, there would be little improvement in visibility from requiring SCR.

The comment is correct that EPA provided information about the cumulative visibility improvement modeled for different BART scenarios in our Advanced Notice of Proposed Rulemaking for the Four Corners Power Plant and the Navajo Generating Station. EPA also provided information about the cumulative visibility improvement in our proposed and supplemental BART actions for Four Corners Power Plant. As we stated in those notices, EPA primarily relied on the benefits at the area with the greatest visibility improvement from controls, but we also considered impacts and benefits at nearby areas, including cumulative visibility benefits. EPA agrees that cumulative visibility benefits summed over multiple Class I areas may be a useful metric that can further inform a BART determination. Such an approach can be useful, for example, in simplifying a complex array of visibility impacts, especially where a source has significant impacts on multiple Class I areas. This approach, however, is not the only means of assessing visibility benefits over multiple Class I areas.

In this action we are evaluating whether NDEP's BART determination for RGGS resulted in the appropriate level of control for that facility. EPA's independent analysis of the modeled visibility improvements at GCNP and all other impacted areas corroborated the results of the NDEP analysis.

Comment 26: Using the WRAP baseline (scenario 00) and EPA's emissions limit of 0.06 lb/MMBtu (scenario 16) for SCR produces a cumulative visibility benefit of 1.82 dv.

Response 26: We disagree with the commenter's use of the WRAP scenario 00 as the baseline against which to measure visibility improvement. Although Scenario 00 models the WRAP NO_X emission rate, it also models the WRAP PM_{10} and SO_2 emission rates, which correspond to emission rates prior to installation of fabric filters (NDEP's PM_{10} BART determination) and wet flue gas desulfurization upgrades (NDEP's SO_2 BART determination). Scenario 16 models PM_{10} and SO_2 emission rates that account for the emission reductions associated with these control technologies. As a result, a comparison of Scenario 00 and 16 overestimates the benefit from SCR, because it also includes the visibility improvement associated with PM_{10} and SO_2 emission reductions.

H. CALPUFF Model

Comment 27: EPA's accepted version of the CALPUFF model, introduced in 2007, is out of date given that new versions were updated in 2008, 2010, and 2011.

Response 27: EPA disagrees with the commenters that any new CALPUFF version should be used for the BART determination. EPA relied on version 5.8 of CALPUFF because it is the EPA-approved version in accordance with the Guideline on Air Quality Models (''GAQM'', 40 CFR 51, Appendix W, section 6.2.1.e); EPA updated the specific version to be used for regulatory purposes on June 29, 2007, including minor revisions as of that date; the approved CALPUFF modeling system includes CALPUFF version 5.8, level 070623, and CALMET version 5.8 level 070623. CALPUFF version 5.8 has been thoroughly tested and evaluated, and has been shown to perform consistently with the initial 2003 version in the analytical situations for which CALPUFF has been approved. Any other version would be considered an ''alternative model'', subject to the provisions of GAQM section 3.2.2(b), requiring full model documentation, peer-review, and performance

evaluation. No such information for the later CALPUFF versions that meet the requirements of section 3.2.2(b) has been submitted to or approved by EPA. Experience has shown that when the full evaluation procedure is not followed, errors that are not immediately apparent can be introduced along with new model features. For example, changes introduced to CALMET to improve simulation of over-water convective mixing heights caused their periodic collapse to zero, even over land, so that CALPUFF concentration estimates were no longer reliable.[20]

In addition, the latest version of CALPUFF, 6.4, incorporates a detailed treatment of chemistry. EPA's promulgation of CALPUFF (68 FR 18440, April 15, 2003) as a ''preferred'' model approved it for use in analyses of Prevention of Significant Deterioration increment consumption and for complex wind situations, neither of which involve chemical transformations. For visibility impact analyses, which do involve chemical transformations, CALPUFF is considered a ''screening'' model, rather than a ''preferred'' model; this ''screening'' status is also described in the preamble to the BART Guidelines (70 FR 39123, July 6, 2005). The change to CALPUFF 6.4 is not a simple model update to address bug fixes, but a significant change in the model science that requires its own rulemaking with public notice and comment.

Furthermore, it should be noted that the U.S. Forest Service and EPA review[21] of CALPUFF version 6.4 results for a limited set of BART applications showed that differences in its results from those of version 5.8 are driven by two input assumptions and not associated with the chemistry changes in 6.4. Use of the so-called ''full'' ammonia limiting method and finer horizontal grid resolution are the primary drivers in the predicted differences in modeled visibility impacts between the model versions. These input assumptions have been previously reviewed by EPA and the FLMs and have been rejected based on lack of documentation, inadequate peer review, and lack of technical justification and validation.

EPA intends to conduct a comprehensive evaluation of the latest CALPUFF version along with other ''chemistry'' air quality models in consultation with the Federal Land Managers, including a full statistical performance evaluation, verification of its scientific basis, determination of whether the underlying science has been incorporated into the modeling system correctly, and evaluation of the effect on the regulatory framework for its use, including in New Source Review permitting. CALPUFF version 5.8 has already gone through this comprehensive evaluation process and remains the EPA-approved version, and is thus the appropriate version for EPA's corroboration of NDEP's BART determination.

I. Nitrate Contribution to GCNP

We are providing a consolidated response to the following comments.

Comment 28: The WRAP's modeling supports the fact that NO_X is only a small contributor to visibility impairment at GCNP.

Comment 29: NO_X is mostly from cars and is not a major contributor to haze compared to other pollutants.

Comment 30: The contribution of nitrates from RGGS to haze at GCNP is so insignificant (0.01 percent) that any additional visibility benefit associated with SCR controls would yield an imperceptible improvement at GCNP for a significantly greater cost.

Comment 31: EPA's modeling did not take into account the fact that nearly 25,000 tons per year of NO_X has been eliminated from the emissions inventory due to closure or cancellation of three generating stations (Mohave, White Pine, and Toquop).

Response 28–31: Section 169A of the Clean Air Act requires BART determinations on BART-eligible EGUs regardless of trends or ambient visibility conditions. Application of BART is one means by which we can ensure that downward emission and visibility impairment trends continue. EPA modeling of NO_X from RGGS showed visibility impacts of up to 0.6 deciviews. This is not a negligible contribution to visibility impairment. EPA concluded in this case only that the incremental cost of SCR was not justified in relation to the visibility impact, not that the visibility impact was deminimis. Even if an individual pollutant or source category appears small to some commenters, the many segments of the emissions inventory together do cause visibility impairment, and each must be addressed in order to make progress towards the national goal of remedying visibility impairment from manmade pollution. EPA identifies stationary sources as an important category to evaluate in any BART analysis. In this case EPA approved the state's conclusion that SNCR was the appropriate BART control.

J. Emissions Limits

Comment 32: The proposed BART NO_X emissions limit (0.20 lb/MMBtu) appears to result in a very small reduction in actual emissions when compared to the performance of the three units over the past two years.

Response 32: EPA evaluated the potential NO_X emissions reduction based on RGGS's permitted emission limits. Actual emissions in tons per year can vary substantially for external reasons such as a downturn in economic conditions generally or unusual weather conditions. Until the permitted emissions limits for RGGS are lowered, RGGS may emit pollutants in those amounts at any time. Therefore, for RGGS the permitted emissions limit is the only enforceable and certain amount to use in calculating potential emission reductions. RGGS is no longer subject to a long-term coal contract and may purchase coal on the spot market. Different coals may also lead to a change in NO_X emissions. RGGS historically burned a very high BTU Utah bituminous coal that when combusted is expected to result in substantially higher NO_X emissions than sub-bituminous coals or lower BTU bituminous coals from Colorado. RGGS has recently added these two coals to the fuel mix at RGGS and the NO_X levels have decreased. EPA determined that the BART emission limit should be achieved when burning any of these coals. Setting a more stringent limit for BART achievable with LNB with OFA and SNCR could prevent RGGS from using only their historical Utah bituminous coal.

Comment 33: Given the sensitivity of boiler operation, size, and configuration, SNCR may not be able to achieve the prescribed level of performance (0.20 lb/MMBtu) on a consistent basis.

Response 33: NDEP will revise the enforceable permit limits to incorporate the NO_X BART emissions limit of 0.20 lb/MMBtu when SNCR is installed and operating at RGGS. EPA expects that Nevada Energy, as the operator of RGGS, will ensure the LNB with OFA and SNCR system is designed to achieve a lower emissions rate than 0.20 lb/MMBtu to insure the BART limit is achieved in practice. RGGS will also be required to continue to operate its continuous emissions monitoring

[20] ''CALPUFF Regulatory Update'' Roger W. Brode, Presentation at Regional/State/LocalModelers Workshop, June 10–12, 2008, available at *http://www.cleanairinfo.com/regionalstatelocalmodelingworkshop/archive/2008/agenda.htm.*

[21] ''CALPUFF Status and Update'' Tyler J. Fox, Presentation at Regional/State/LocalModelers Workshop, April 30–May 4, 2012, available at *http://www.cleanairinfo.com/regionalstatelocalmodelingworkshop/archive/2012/agenda.htm.*

system for NO_X and report any excess emissions. If RGGS exceeds its emissions limit for NO_X, NDEP, EPA or a citizen may bring an enforcement action that can result in penalties and injunctive relief. EPA has determined based on the record provided by the state that NDEP should be able to consistently operate at an emissions limit below 0.20 lb/MMBtu and the comment does not provide a basis for us to revise the final SIP approval or FIP.

K. Compliance Period

Comment 34: Allowing five years from promulgation to install SNCR is excessive since SNCR can be installed in less than one year.

Response 34: We have reconsidered the compliance date in our proposal in response to this comment. The Nevada BART regulation requires that BART control measures at RGGS must be installed and operating ''[o]n or before January 1, 2015; or (2) [n]ot later than 5 years after approval of Nevada's state implementation plan for regional haze by the United States Environmental Protection Agency Region 9, *whichever occurs first.*'' NAC 445B.22096(2)(a) (emphasis added). We approved this requirement into the SIP on March 26, 2012 (effective April 25, 2012). 77 FR 17340. Therefore, the SIP-approved BART implementation deadline at RGGS for all pollutants, including NO_X, is January 1, 2015. Consistent with this requirement, we are revising the compliance date in our FIP to January 1, 2015.

L. Compliance Method

Comment 35: Commenters state that the proposed method of demonstrating compliance with the NO_X emissions rate is more stringent than the rule requires; does not allow the facility to take credit for the times a unit is not in operation; does not provide a way for a unit that is out of compliance for a period of time to get back into compliance without a continued period of non-compliance; and is in contrast to the BART modeling protocol that directs the use of a pounds per hour limit as opposed to an emissions rate limit for all BART eligible units over a 24-hour basis. Commenters propose an alternate compliance demonstration methodology that consists of a unit-wide 30-calendar day rolling cap (in total lbs of NO_X). The cap is calculated based upon each unit operating continuously (24 hours/day for 30 days) at its permitted maximum hourly heat rate (MMBtu/hr), and at its BART NO_X emission limit (0.20 lb/MMBtu, which was determined based upon the operation of an ammonia injection system in conjunction with LNB). Compliance would then be demonstrated by calculating the unit-wide NO_X emission rate (in total lbs of NO_X) for the current calendar day, and adding it to the previous 29 calendar days' unit-wide NO_X emission rate (in total lbs of NO_X), and comparing this 30-calendar day total to the value of the unit-wide 30-calendar day rolling cap.

Response 35: We disagree with the commenters, and further do not consider the commenters' proposed compliance demonstration methodology to meet BART requirements. The Regional Haze Rule defines BART as ''the best system of *continuous* emission reduction for each pollutant'', and requires that ''each source subject to BART maintain the control equipment required by the subpart and establish procedures to ensure such equipment is properly operated [* * *].'' [22] EPA's BART determinations for coal fired EGUs have set concentration limits, expressed as lb/MMBtu for the various visibility impairing pollutants averaged over a 30-day period. The proposed and finalized limit is more flexible than typical EPA BART determinations in that it allows the 3 units subject to BART to be averaged together to determine compliance (as requested by NDEP). BART limits are designed to be met at all times, not to provide for a facility to easily come back into compliance from a violation. We disagree that the facility requires additional flexibility to come back into compliance following an exceedance event, and consider a 30-day rolling average to provide a sufficient length of time to allow a facility to address and correct for perturbations that are reasonably expected to occur over the course of normal operations, and that cause short-term extra emissions.

Allowing a facility to take credit for times it is not operating, or for when it is not operating at maximum capacity, would allow RGGS to operate without the BART-required SNCR. SNCR can be expected to remove approximately 30 percent of the potential NO_X emissions. If the overall capacity (as evaluated against the maximum potential MW output) fell below 70 percent in any 30-day period, under the commenter's proposal RGGS would not have to operate the SNCR ammonia injection at all to meet its limit. Therefore, this would not meet the BART definition application of the best system of continuous emission reduction.

EPA recognizes that there are differences between BART emission limits and the emissions modeled to determine visibility improvements. This is the result of the models requiring short-term emission projections and the need for BART limits to have practical averaging times. Short averaging periods such as 1-hour averages would better correlate to the modeled emissions, but EPA has determined that such a short averaging period is not practical for facilities subject to BART. EPA has, therefore, directed that averaging times should be no longer than 30-day rolling averages and should include all periods of startup, shutdown, and malfunction. As discussed above, an emission limit that allows a facility to take credit for non-operation could lead to substantially higher 24-hour emissions of visibility impairing pollutants because the facility could turn off its SNCR.

Specifically, the proposed emission cap, in the form as described by the commenters, does not by itself ensure that the control equipment determined as BART is continuously operated. We acknowledge that the regional haze regulations provide flexibility in establishing requirements and procedures to ensure that control equipment is properly and continuously maintained, and that a mass emission cap could be an acceptable BART emission limitation. In its current form, however, the emission cap proposed by the commenters allows a potential scenario in which, for a given unit-wide 30-calendar day period, one unit could operate at a NO_X emission level of 0.40 lb/MMBtu in exchange for non-operation of another unit (essentially, operating that unit at 0.00 lb/MMBtu). An emission level of 0.40 lb/MMBtu corresponds to operation of LNB only, and does not reflect the operation of SNCR.

In order to allow for better management of the elevated levels of emissions associated with startup events, we have revised our proposed determination method to be based on a boiler operating day average, rather than on a calendar day average. If based on a calendar day basis, the unit-wide 30-day rolling average could include as little as one hour of operation if the units were all offline for an outage that lasted longer than thirty days, because the first hour of operation would be the only data recorded in the last thirty calendar days. If based on a boiler operating day basis, the startup emissions ''spike'' would be averaged with emission data from before outage, which would reflect nonzero emissions values, rather than with data from during the outage, which would reflect zero emissions.

[22] 40 CFR 51.301 and 40 CFR 51.308(e)(1)(v).

M. Environmental Compliance at RGGS

Comment 36: Environmental controls, monitoring and practices have improved over recent years at the plant, which meets or exceeds all emissions limits, has reduced emissions, and has some of the lowest emissions of any plant in the country.

Response 36: EPA agrees in part with the comment. Nevada Energy has installed controls that substantially reduced the PM emissions from RGGS and installed ROFA on unit 4 to reduce NO_X emissions. Since monitoring began under the Acid Rain rules, RGGS has been among the coal fired electric generating units that emits the least SO_2. The same is not true for NO_X emissions from units 1, 2, and 3. By finalizing this action, EPA will ensure that there are also significant reductions in NO_X emissions from RGGS, as required by the Regional Haze rule and Section 169A of the CAA. Each of the 3 units at RGGS will reduce NO_X emissions from 0.46 lb/MMBtu to 0.20 lb/MMBtu.

N. Health Effects

Comment 37: Pollution from RGGS is causing a variety of health problems (e.g., allergies, respiratory illnesses, heart ailments, skin lesions, thyroid disorders, sinus infections) for the Moapa Band of Paiutes who reside directly adjacent to RGGS.

Response 37: In addition to regional haze, EPA assesses air quality regularly under the CAA with respect to setting and ensuring that areas in the country attain the NAAQS. The NAAQS are the health based standards that are set by EPA for the entire country. RGGS is located in an area that is designated as attainment for most of the NAAQS.[23] This means that the air quality in the area surrounding RGGS is meeting most of the national health-based standards set by EPA.

Breathing air containing ozone can reduce lung function and increase respiratory symptoms, thereby aggravating asthma or other respiratory conditions. The area surrounding RGGS was designated nonattainment for the 1997 8-hour ozone NAAQS. The Clark County APCD and NDEP together are responsible for adopting and implementing programs for both stationary and mobile sources to bring the area into attainment for the 8-hour ozone NAAQS. On March 29, 2011, EPA published a direct final rule determining that the Clark County nonattainment area has attained the 1997 8-hour ozone NAAQS (76 FR 17343). Although the area has not been redesignated to attainment, the Clark County area continues to meet the 1997 8-hour ozone NAAQS. On April 30, 2012, EPA issued final designations for the 2008 8-hour ozone NAAQS. Clark County was designated attainment for this more stringent ozone standard.[24]

The Moapa Band of Paiutes resides on land adjacent to RGGS. The stacks at RGGS release the exhaust at a high elevation for the purpose of preventing excessive concentration of pollutants in the immediate vicinity of the plant.[25] Because the area surrounding RGGS is meeting the health-based 1997 and 2008 ozone NAAQS, EPA expects that air quality in the area is protective of human health. Because today's actions require additional reductions in NO_X emissions, air quality will continue to improve. However, regardless of the attainment status of the surrounding area, EPA has been and will remain involved in efforts to ensure that the operation of RGGS meets all environmental requirements. Consequently, EPA believes it has implemented the executive order with respect to the Moapa Tribe in these actions implementing BART at RGGS.

O. Environmental Justice

Comment 38: EPA should implement Executive Order 13175 since pollution from RGGS is having a substantial direct effect on the tribe.

Response 38: Ground-level ozone has the ability to impact human health, and is a secondary pollutant formed from precursor gases, primarily volatile organic compounds (VOCs) and NO_X. However, monitored ozone concentrations throughout Clark County, including monitors nearest RGGS, meet the 2008 ozone standard. EPA considers the air quality in the vicinity of the plant to be protective of public health. However, regardless of the attainment status of the surrounding area, EPA has been and will remain involved in efforts to ensure that the operation of RGGS meets all environmental requirements.

P. Economic Impacts

Comment 39: The high cost of SCR could cause RGGS to close, which would harm the local economy through the loss of jobs, the loss of contracts, and the loss of customers for local businesses.

Response 39: EPA has determined that it is cost effective for RGGS to install and operate SNCR at Units 1, 2 and 3. Because EPA is not disapproving NDEP's determination to require SNCR rather than SCR, EPA does not expect the facility to close and thus the comment does not require additional response.

III. Summary of EPA Actions

EPA is approving in part and disapproving in part the remaining portion of the Nevada Regional Haze SIP that implements the Regional Haze Rule that requires states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas. EPA is approving Nevada's selection of a NO_X emissions limit of 0.20 lb/MMBtu as BART for Units 1 and 2 at RGGS. EPA is disapproving two provisions of Nevada's BART determination for NO_X at RGGS: the emissions limit for Unit 3 and the compliance method for all three units. EPA is promulgating a FIP to replace the disapproved provisions by establishing a BART emissions limit for NO_X of 0.20 lb/MMBtu at Unit 3, and a 30-day averaging period for compliance based on a heat input-weighted basis across all three units.

EPA estimates the total, facility-wide capital costs of complying with this final BART determination for NO_X to be $26.5 million, and total annual costs (annualized capital costs plus additional operating costs) to be $4.3 million per year. The FIP requirements on Unit 3, which will require that unit to operate at 0.20 lb/MMBtu instead of 0.28 lb/MMBtu, will result in an additional operating cost of approximately $75,000 per year and will achieve a NO_X reduction of 393 tons per year. This final BART determination is expected to reduce emissions of NO_X by 58 percent, from 6,980 tons per year to 2,968 tons per year, resulting in a facility-wide average cost-effectiveness of about $1,078 per ton of NO_X removed. EPA anticipates that this investment will reduce visibility impairment caused by RGGS by an average of 48 percent at 5 Class I areas within 300 km of the facility. A detailed summary of the cost and visibility benefits were provided in the Technical Support Document for the proposed rulemaking.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action finalizes a SIP approval and a source-specific FIP for a single stationary source, the Reid Gardner

[23] Please see *http://www.epa.gov/region09/air/maps/maps_top.html* for EPA Region IX air quality designations.

[24] *http://www.epa.gov/ozonedesignations/2008standards/final/region9f.htm.*

[25] EPA Good Engineering Practice (GEP) *http://www.epa.gov/scram001/guidance/guide/gep.pdf.*

Generating Station in Nevada. This type of action is exempt from review under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the FIP portion of this rulemaking applies to a single facility, Reid Gardner Generating Station, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. As the Reid Gardner Generating Station is not a small entity, the FIP for Reid Gardner Generating Station being finalized today does not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

This rule will impose an enforceable duty on the private sector owners of Reid Gardner Generating Station. However, this rule does not contain a Federal mandate that may result in expenditures of $100 million (in 1996 dollars) or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's estimate for the total annual cost for Reid Gardner Generating Station to lower its NO_X emissions limit at Unit 3 to 0.20 lb/MMBtu and for Units 1–3 to meet that NO_X emissions limit on a 30 successive boiler operating day rolling average does not exceed $100 million (in 1996 dollars) in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not impose direct compliance costs on Nevada, and will not preempt Nevada law. This final action will reduce the emissions of one pollutant from a single source, Reid Gardner Generating Station.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action requires emission reductions of NO_X at a specific private stationary source located in Nevada. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications because the Reid Gardner Generating Station is located adjacent to the Moapa Band of Paiutes reservation and the Tribe has expressed its concerns directly to EPA on several occasions. However, this final action will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This final rule requires Reid Gardner Generating Station, a major stationary source located in Nevada, to reduce emissions of NO_X under the BART requirement of the Regional Haze Rule. This will benefit air quality and the Moapa Band of Paiutes.

EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA met with President Anderson on August 11, 2011, and again on April 17, 2012, to hear the Tribe's concerns directly. In addition, EPA held one public hearing on the Moapa Reservation on May 3, 2011, to ensure that tribal members had the opportunity to provide oral testimony.

The Moapa Band of Paiutes joined a consortium of environmental groups to submit comments on our proposed rule. The main concern expressed by the consortium was that EPA was not requiring Reid Gardner Generating Station to install and operate the top NO_X control option, selective catalytic reduction, as BART. The comments also raised potential health impacts and environmental justice concerns relative to the Moapa Band of Paiutes from not requiring the most stringent NO_X control option.

EPA summarized and responded to comments from the environmental consortium and Moapa Band of Paiutes. Our responsibilities under the Executive Order must be exercised in the context of our role under the CAA, which is to

review NDEP's plan and determine if it meets the CAA requirements. We have done a thorough review and have determined that NDEP has adopted an emission limit that meets BART for RGGS. That emission limit can be met with SNCR instead of SCR, but RGGS will still have to install additional pollution control equipment that will reduce NO_X emissions. These emission reductions will not only improve visibility but will provide additional health benefits for the Moapa Band of Paiutes and other residents of Clark County. EPA has been and will remain involved in efforts to ensure that the operation of RGGS meets all environmental requirements.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: *Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it requires emissions reductions of NO_X from a single stationary source. Because this action only applies to a single source and is not a rule of general applicability, it is not economically significant as defined under Executive Order 12866, and the rule also does not have a disproportionate effect on children. However, to the extent that the rule will reduce emissions of NO_X, which contributes to ozone formation, the rule will have a beneficial effect on children's health by reducing air pollution that causes or exacerbates childhood asthma and other respiratory issues.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurements listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 through 5

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring

NO_X Emissions—Continuous Emissions Monitors

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule requires emissions reductions of one pollutant from a single stationary source, Reid Gardner Generating Station.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability and only applies to one facility, the Reid Gardner Generating Station.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: August 13, 2012.

Lisa P. Jackson,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by:

■ a. In paragraph (c), Table 1 revising the entry for ''445B.22096.''

■ b. In the table in paragraph (e), revising the entry for ''Nevada Regional Haze State Implementation Plan (October 2009)''.

The revised text reads as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NEVADA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	* *
445B.22096, excluding the NO_X averaging time and control type for units 1, 2 and 3 and the NO_X emission limit for unit 3 in sub-paragraph (1)(c), all of which EPA has disapproved.	Control measures constituting BART; limitations on emissions.	1/28/10	[Insert page number where the document begins 8/23/12].	Included in supplemental SIP revision submitted on September 20, 2011, and approved as part of approval of Nevada Regional Haze SIP. Excluding the NO_X averaging time and control type for units 1, 2 and 3 and the NO_X emission limit for unit 3 of NV Energy's Reid Gardner Generating Station, all of which EPA has disapproved.
* *	*	*	*	* *

* * * * *

(e) * * *

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Nevada Regional Haze State Implementation Plan (October 2009), excluding the BART determination for NO_X at Reid Gardner Generating Station in sections 5.5.3, 5.6.3 and 7.2, which EPA has disapproved.	State-wide	11/18/09 ..	[Insert page number where the document begins 8/23/12].	Excluding Appendix A (''Nevada BART Regulation''). The Nevada BART regulation, including NAC 445B.029, 445B.22095, and 445B.22096, is listed above in 40 CFR 52.1470(c).
* *	*	*	*	* *

■ 3. Section 52.1488 is amended by:

■ a. Revising paragraph (e).

■ b. Adding paragraph (f).

The revision and addition read as follows:

§ 52.1488 Visibility protection.

* * * * *

(e) *Approval.* On November 18, 2009, the Nevada Division of Environmental Protection submitted the ''Nevada Regional Haze State Implementation Plan.'' With the exception of the BART determination for NO_X at Reid Gardner Generating Station in sections 5.5.3, 5.6.3 and 7.2; the NO_X averaging time and control type for units 1, 2 and 3 in sub-paragraph (1)(c) of Nevada Administrative Code section 445B.22096; and the NO_X emission limit for unit 3 in sub-paragraph (1)(c) of Nevada Administrative Code section 445B.22096; the Nevada Regional Haze State Implementation Plan, as supplemented and amended on February 18, 2010 and September 20, 2011, meets the applicable requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308.

(f) *Source-specific federal implementation plan for regional haze at Reid Gardner Generating Station Units 1, 2 and 3.* This paragraph (f) applies to each owner and operator of the coal-fired electricity generating units (EGUs) designated as Units 1, 2, and 3 at the Reid Gardner Generating Station in Clark County, Nevada.

(1) *Definitions.* Terms not defined below shall have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (f):

Ammonia injection shall include any of the following: anhydrous ammonia, aqueous ammonia or urea injection.

Boiler operating day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any of the units identified in paragraph (f) of this section.

Combustion controls shall mean new low NO_X burners, new overfire air, and/or rotating overfire air.

Continuous emission monitoring system or *CEMS* means the equipment required by 40 CFR Part 75 to determine compliance with this paragraph (f).

NO_X means nitrogen oxides expressed as nitrogen dioxide (NO_2).

Owner/operator means any person who owns or who operates, controls, or supervises an EGU identified in paragraph (f) of this section.

Unit means any of the EGUs identified in paragraph (f) of this section.

Unit-wide means all of the EGUs identified in paragraph (f) of this section.

Valid data means data recorded when the CEMS is not out-of-control as defined by part 75 and which meets the relative accuracy requirements of this paragraph.

(2) *Emission limitations*—the total discharge of NOx from Units 1, 2, and 3, expressed as NO_2, shall not exceed 0.20 lb/MMBtu determined over a 30 successive boiler operating day period. For each boiler operating day, hourly emissions of NO_2, in pounds of NO_2, for units 1, 2 and 3 for that day shall be summed together. For each boiler operating day, heat input, in millions of BTU, for units 1, 2 and 3 for that day shall be summed together. Each day the 30 successive boiler operating day NO_2 emission rate, in lb/MMBtu, shall be determined by adding together that day and the preceding 29 boiler operating days' pounds of NO_2 and dividing that total pounds of NO_2 by the sum of the heat input during the same 30-day period.

(3) *Compliance date.* The owners and operators subject to this section shall comply with the emissions limitations and other requirements of this section by January 1, 2015 and thereafter.

(4) *Testing and monitoring.* (i) At all times after the compliance date specified in paragraph (f)(3) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from each unit. In addition to these requirements, relative accuracy test audits shall be performed for both the NO_2 pounds per hour measurement and the hourly heat input measurement. Each such relative accuracy test audit shall have a relative accuracy, as defined in 40 CFR part 60, appendix F, section 2.6, of less than 20 percent. This testing shall be evaluated each time the 40 CFR part 75 monitors undergo relative accuracy testing. Compliance with the emission limit for NO_2 shall be determined by using valid data that is quality assured in accordance with the requirements of this paragraph. (ii) If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the unit-wide rolling 30 successive boiler operating day average. Each unit shall obtain at least 90 percent hours of data over each calendar quarter. 40 CFR part 60 Appendix A Reference Methods may be used to supplement the part 75 monitoring.

(iii) Upon the effective date of the unit-wide NO_X limit, the owner or operator shall have installed CEMS software that meets with the requirements of this section for measuring NO_2 pounds per hour and calculating the unit-wide 30 successive boiler operating day average as required in paragraph (f)(2) of this section.

(iv) Upon the completion of installation of ammonia injection on any of the three units, the owner or operator shall install, and thereafter maintain and operate, instrumentation to continuously monitor and record levels of ammonia consumption for that unit.

(5) *Notifications.* (i) The owner or operator shall notify EPA within two weeks after completion of installation of combustion controls or ammonia injection on any of the units subject to this section.

(ii) The owner or operator shall also notify EPA of initial start-up of any equipment for which notification was given in paragraph (f)(5)(i) of this section.

(6) *Equipment Operations.* After completion of installation of ammonia injection on any of the three units, the owner or operator shall inject sufficient ammonia to minimize the NO_X emissions from that unit while preventing excessive ammonia emissions.

(7) *Recordkeeping.* The owner or operator shall maintain the following records for at least five years: (i) For each unit, CEMS data measuring NO_X in lb/hr, heat input rate per hour, the daily calculation of the unit-wide 30 successive boiler operating day rolling lb NO_2/MMbtu emission rate as required in paragraph (f)(2) of this section. (ii) Records of the relative accuracy test for NO_X lb/hr measurement and hourly heat input

(iii) Records of ammonia consumption for each unit, as recorded by the instrumentation required in paragraph (f)(4)(iv) of this section.

(8) *Reporting.* Reports and notifications shall be submitted to the Director of Enforcement Division, U.S. EPA Region IX, at 75 Hawthorne Street, San Francisco, CA 94105. Within 30 days of the end of each calendar quarter after the effective date of this section, the owner or operator shall submit a report that lists the unit-wide 30 successive boiler operating day rolling lb NO_2/MMBtu emission rate for each day. Included in this report shall be the results of any relative accuracy test audit performed during the calendar quarter.

(9) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

[FR Doc. 2012–20503 Filed 8–22–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312182–2239–02]

RIN 0648–XC166

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the second seasonal period (July 1–September 14) is projected to be reached by the effective date of this rule. From the effective date of this rule until September 15, 2012, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is limited to 30-percent by weight of all

fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 a.m. Pacific Daylight Time, August 23, 2012.

DATES: Effective 12:01 a.m. Pacific Daylight Time (PDT) August 23, 2012, through 11:59 p.m., September 14, 2012.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past effort, the directed fishing harvest allocation for the second allocation period (July 1–September 14) will be reached and therefore directed fishing for Pacific sardine is being closed until September 15, 2012. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 a.m., August 23, through September 14, 2012, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 30-percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1–December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken only incidental harvest is allowed, and for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20670 Filed 8–17–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 164

Thursday, August 23, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Cessna Aircraft Company (Cessna) Model 402C airplanes modified by Supplemental Type Certificate (STC) SA927NW and Model 414A airplanes modified by STC SA892NW. That NPRM proposed a complete inspection of the flap system and modification of the flap control system. That NPRM was prompted by a report of a Cessna Model 414A airplane modified by STC SA892NW that experienced an asymmetrical flap condition causing an uncommanded roll when the pilot set the flaps to the approach position. This action revises that NPRM by incorporating additional service information that addresses proper rigging procedures and corrective actions following additional inspection procedures. We are proposing this supplemental NPRM to correct the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by October 9, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Sierra Industries, Ltd, 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; email: *info@sijet.com;* Internet: *http://www.sijet.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael A. Heusser, Program Manager, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5038; fax: (817) 222–5160; email: *michael.a.heusser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to all Cessna Aircraft Company (Cessna) Model 402C airplanes modified by Sierra Industries, Ltd. Supplemental Type Certificate (STC) SA927NW and Model 414A airplanes modified by STC SA892NW (both STCs formerly held by Robertson Aircraft Corporation). That NPRM published in the **Federal Register** on October 29, 2010 (75 FR 66700).

That NPRM (75 FR 66700, October 29, 2010) was prompted by a report that a Cessna Model 414A airplane, which was modified by STC SA892NW, had an asymmetrical flap condition that caused an uncommanded roll when the pilot set the flaps to the approach position.

The flap preselect cable connects to the arm assembly and provides the flap position to the flap selector to close the position loop for the flap position. Micro switches are located on the arm assembly and provide the electrical signal for the arm position.

STC SA927NW and STC SA892NW use the original production preselect cable. However, the STCs added an extension to the arm assembly that requires increased travel of the preselect cable to obtain the same rotation as previously obtained with the shorter arm assembly. To obtain the same arm assembly rotation, the preselect cable must travel approximately an additional .75 inch. However, the original cable has internal mechanical stops that prevent it from traveling the additional distance. The cable's internal stops are contacted by a smaller rotation displacement of the arm assembly. Since more linear displacement of the cable is required to obtain the same switch action, the internal mechanical

stops of the cable are reached before the switches designed to stop the motion of the flaps activate.

As a result, when the internal stops in the cable are contacted, the rotation of the arm assembly carrying the micro switches stops and the switch to stop the drive motor is not activated. Because the switch is not activated, the motor continues to run until either the motor drive shear pin fails, a cable breaks, the structural bracket breaks, or the secondary switches stop the motor before something breaks. The sequence was verified on the reported airplane by the rigging, installation, and operation of an STC production configuration.

That NPRM (75 FR 66700, October 29, 2010) proposed to require a complete inspection of the flap system and modification of the flap control system.

This condition, if not corrected, could result in an asymmetrical flap condition with consequent loss of control.

Actions Since Previous NPRM Was Issued

During a subsequent flight after issuance of that NPRM (75 FR 66700, October 29, 2010), additional issues on the flap control system were discovered. The service information called out in the initial NPRM did not address these additional issues. Further investigation determined that the lack of a proper rigging procedure was a contributing factor in the flap issues.

Sierra Industries, Ltd. has issued Instructions for Continued Airworthiness, 82–1, Issue 1, dated June 12, 2012, which incorporates proper rigging procedures and corrective actions following additional inspection procedures.

Comments

We gave the public the opportunity to comment on the original NPRM (75 FR 66700, October 29, 2010). We received no comments on that NPRM or on the determination of the cost to the public.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the original NPRM (75 FR 66700, October 29, 2010). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information proposed in the original NPRM, and require incorporation of Sierra Industries, Ltd. Instructions for Continued Airworthiness, 82–1, Issue 1, dated June 12, 2012, into the FAA-approved maintenance program.

The accomplishment and incorporation of these documents should adequately mitigate the unsafe condition.

Costs of Compliance

We estimate that this proposed AD affects 150 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the flap system and modify/replace the flap preselect control cable.	25 work-hours × $85 per hour = $2,125	$1,000	$3,125	$468,750

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD.

(a) Comments Due Date

We must receive comments by October 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company (Cessna) Model 402C airplanes

modified by Supplemental Type Certificate (STC) SA927NW and Model 414A airplanes modified by STC SA892NW, all serial numbers, that are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a Cessna Model 414A airplane modified by STC SA892NW that experienced an asymmetrical flap condition causing an uncommanded roll when the pilot set the flaps to the approach position. We are issuing this AD to prevent failure of the flap system, which could result in an asymmetrical flap condition. This condition could result in loss of control.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection of the Flap Control System

Within 60 days after the effective date of this AD, do a complete inspection of the flap control system following the Inspection Instructions section of Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(h) Modification of the Flap Control System

(1) If any damage to the flap bellcrank or bellcrank mounting structure is found in the inspection required in paragraph (g) of this AD, before further flight, repair the damage and modify the flap control system following the Accomplishment Instructions of Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(2) If no damage to the flap bellcrank or bellcrank mounting structure is found in the inspection required in paragraph (g) of this AD, within 180 days after the effective date of this AD, modify the flap control system following the Accomplishment Instructions of Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(i) Instructions for Continued Airworthiness

Within 7 months after the effective date of this AD, or during your next annual inspection, whichever occurs earlier, incorporate Sierra Industries, Ltd. Instructions for Continued Airworthiness, 82–1, Issue 1, dated June 12, 2012, into your FAA-approved maintenance program.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office , FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Michael A. Heusser, Program Manager, Fort Worth ACO, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5038; fax: (817) 222–5160; email: *michael.a.heusser@faa.gov*.

(2) For service information identified in this AD, contact Sierra Industries, Ltd, 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; email: *info@sijet.com;* Internet: *http://www.sijet.com*. You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on August 16, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20734 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 400 and 401

[Docket No.: FAA–2012–0045; Notice No. 12–05]

RIN 2120–AJ90

Exclusion of Tethered Launches From Licensing Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to exclude tethered launches as defined in this proposal from the existing licensing requirements. This proposed rule would maintain public safety for these launches by providing launch vehicle operators with clear and simple criteria for a safe tethered launch. The FAA would not require a license, permit or waiver for tethered launches that satisfy the design and operational criteria proposed here.

DATES: Send comments on or before October 22, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0045, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Shirley McBride, Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470; email *Shirley.McBride@faa.gov*.

For legal questions concerning this proposed rule, contact Sabrina Jawed, AGC–240, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8839; email *Sabrina.Jawed@faa.gov*.

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this proposal and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as amended and re-codified at 51 U.S.C. 50901–50923 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. Title 51 U.S.C. 50901(a)(7) directs the FAA to regulate only to the extent necessary, in relevant part, to protect the public health and safety and safety of property. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

I. Background

The FAA's licensing and permitting requirements for commercial space launches are contained in 14 CFR chapter III. Section 400.2 specifies the requirements in chapter III apply to commercial space transportation activities conducted in the United States or by a U.S. citizen, but do not apply to amateur rocket activities or to space activities carried out by the United States Government on behalf of the United States Government.

The FAA began hearing of tethered launches around 2002, when launch operators tested relatively small vehicles tethered to the ground with engines that burned for short periods of time. Operators later tested larger, more developed and costly vehicles by attaching them to a tether and attaching the tether to a crane or forklift to prevent the vehicle from hitting the ground. Some of these tethered launches met the FAA's amateur rocket activity criteria,[1] and thus were excluded from chapter III requirements. Those that did not meet the amateur rocket criteria should have been required to comply with chapter III. However, because these launches had a tether system that restrained the vehicle within a certain range, the FAA initially deemed them low risk and did not require operators to conduct tethered launches under chapter III. In 2008, the FAA reassessed this determination and found that launches that meet the applicability criteria of § 400.2, regardless of whether the launch vehicle is restrained by a tether, must be conducted under chapter III. That is, operators must apply for a license, permit or waiver. That year, the FAA reviewed and granted five chapter III waiver requests to conduct tethered launches. The agency now seeks an approach to tethered launches that would maintain public safety and be less burdensome on launch operators and the FAA. That approach is the subject of this proposed rule.

II. Overview of Proposed Rule

Title 51 U.S.C. 50901(a)(7) directs the FAA to regulate only to the extent necessary, in relevant part, to protect the public health and safety and safety of property. Therefore, the FAA proposes to reduce the scope of chapter III by excluding tethered launches that meet the requirements of this proposed rule. This proposal would maintain public safety by creating threshold criteria to determine whether chapter III needs to apply. FAA oversight would no longer be required for these launches because of the comprehensive protection the proposed launch vehicle, tether system, and operational criteria would provide.

This rulemaking would not affect amateur rocket activities, regardless of whether they include a tether system, because chapter III regulations do not apply to the launch of amateur rockets. Those operators that conduct launches covered under chapter III and are not eligible for the exclusion proposed here, must continue to follow current requirements by applying for a license, permit or waiver.

The FAA is proposing a number of changes consistent with the goals of Executive Order 13610, Identifying and Reducing Regulatory Burdens, 77 FR 28469 (May 14, 2012). This proposal, if adopted, would require that the launch vehicle be unmanned, be powered by a liquid or hybrid engine, and carry no more than 5,000 pounds of propellant. It would also require that the tether system, including the points of attachment within the tether system, meet specified structural criteria, and that the tethered operations be carried out within specified separation distances from the public. The structural criteria would mitigate the hazards that can compromise the structural integrity of the tether system. The vehicle requirements and operational criteria would provide additional protection to the public by mitigating potential hazards posed by a tether system failure.

The proposed rule would alleviate burdens on both the vehicle operator and the FAA. The operator would no longer incur the costs associated with submitting a launch license application, permit application or petition for waiver under chapter III. In addition, the operator would not incur the costs associated with any delay in processing applications or waivers. Finally, the FAA would not have to evaluate applications, conduct independent analyses, or issue licenses, permits or waivers.

III. Discussion of the Proposal

This proposal would amend two sections of part 400. It would revise § 401.5 (Definitions) to add a definition for a tether system. It would also revise § 400.2 (Scope) to add requirements for the launch vehicle and tether system, as well as separation distances from the public for the tethered launch operations.

A. Proposed Definition (§ 401.5)

The FAA proposes to define *tether system* as a device that would contain launch vehicle hazards by physically constraining a launch vehicle in flight to a specified range from its launch point. A tether system includes all components, from the point of attachment to the vehicle to a solid base, that experience load during a tethered launch.

A tether system should prevent a vehicle from departing the launch site because the vehicle could pose a hazard to the public. Typically, a tether system is composed of at least three parts: one vehicle connection; one fixed connection; and at least one tether that has one end fastened to the vehicle connection and the other end fastened to a fixed connection to a solid base so as to limit the vehicle's range of movement. A vehicle connection consists of all mechanical components that attach a tether to a launch vehicle. These include, for example, metal frames, bolts that attach the vehicle and metal frame together, and shackles. A fixed connection attaches a tether to a solid base, such as a crane, a forklift or

[1] Prior to 2008, ''amateur rocket activities'' was defined in 14 CFR § 401.5 as ''launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—i.e., gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.'' In 2008, the FAA moved the definition to 14 CFR part 1, chapter I and revised it as follows: ''Amateur Rocket means an unmanned rocket that is propelled by a motor or motors having a combined total impulse of 889,600 Newton-seconds (200,000 pound-seconds) or less; and cannot reach an altitude greater than 150 kilometers (93.2 statute miles) above the earth's surface.'' 14 CFR 1.1; *Requirements for Amateur Rocket Activities, Final Rule,* 73 FR 73781 (Dec. 4, 2008).

the ground, and it consists of all mechanical components that accomplish the attachment. Examples of these mechanical components include the component that attaches any crane to the rest of the system, such as shackles or a bolt that attaches a solid base and shackle together.

The FAA's proposed definition is broad enough to encompass all possible tether system configurations. This proposed definition would require operators, when determining if chapter III applies, to account for the effect of a tethered launch on every component from the point of attachment to the vehicle to a solid base, that experience load during a tethered launch. Accounting for a whole system would reduce the likelihood of a system failure caused by an overlooked component that was unable to withstand the maximum load exerted on it.

In devising a tether system, the operator should take into account the vehicle's structural integrity because if the tether were able to withstand the forces exerted on it, but the vehicle could not, then the vehicle could break free. If this were to happen and the vehicle exceeded the proposed flight limit of 75 feet above ground level (AGL), the operator would have failed to comply with the proposed requirement in § 400.2(c)(2)(iii).

The FAA's proposed definition accounts for only one tether, regardless of any other tethers within the system. A tether system containing multiple tethers or multiple attachment points is not necessarily more reinforced or safer: all of the applied forces may not be evenly distributed among the tethers. For instance, for a tether system with four tethers, if an operator assumes that the maximum load is evenly distributed among all four tethers of the system and designs each tether to withstand one-fourth of the maximum load, the entire tether system could fail if the vehicle's position shifted and more than one-fourth of the maximum load was placed on a single tether. In other words, if one tether can fail, then all tethers within the system can fail. Accordingly, in order to reduce the likelihood of a tether system failure, the system must contain at least one tether capable of bearing the maximum force exerted on the tether system, regardless of the number of additional tethers within the system. Increasing the number of tethers within the system does not guarantee an increase in strength for the overall system.

B. Proposed Launch Vehicle (§ 400.2 (c)(1))

In order to avoid the applicability of chapter III, the FAA proposes that a launch vehicle would have to be unmanned and meet the requirements proposed below.

1. Engine Type

The FAA would require a launch vehicle excluded by tether from chapter III to have a liquid or hybrid motor; a solid rocket motor would not be permitted. Liquid or hybrid motors are composed of systems that require mixing of the propellants to combust, whereas solid motors consist of relatively simple systems where the propellants are already formulated with oxidizer dispersed in fuel. If a tethered vehicle were to lose control, the operator would rely on the tether system to constrain the vehicle and bring it to the ground. The fragile nature of liquid or hybrid motors ensures that ground impact would render them inoperable.

2. Propellant Cap

The FAA would not permit a launch vehicle to carry more than 5,000 pounds of propellant. The FAA's records indicate that, historically, the most propellant that has been on board a launch vehicle for a tethered launch is approximately 1,000 pounds. Greater propellant amounts result in both a heavier launch vehicle and greater explosive energy.

To determine this proposed cap, the FAA assessed the weight capacity of cranes and forklifts from a random sampling and from data used during past tethered launches. The data from the past launches indicate that the average weight capacity of these crane or forklift tether systems was 6,000 pounds; however, there were gaps in the data because this information was voluntary and not all operators provided it. To fill in the gaps, the FAA randomly selected eleven crane and forklift models from several manufacturers.[2] The data obtained from the random samples indicate that the average weight capacity of a crane or forklift is also approximately 6,000 pounds. For a tethered vehicle, the vehicle's dry weight uses a maximum of approximately 15 percent of the crane or forklift weight capacity.[3] This leaves approximately 85 percent of the weight capacity available for the propellant. To compute the maximum propellant amount that a tethered vehicle can carry, the FAA took the 6,000-pound crane or forklift weight capacity and multiplied it by 85 percent. This computation resulted in a maximum propellant weight of 5,100 pounds. To provide a margin for the weight capacity of the crane or forklift, the FAA rounded this value down to 5,000 pounds.

C. Proposed Tether System (§ 400.2(c)(2))

The FAA proposes conservative technical and design criteria for an effective tether system. The FAA developed these criteria by determining what would prevent a tether from breaking and exposing the public to launch vehicle hazards. The FAA proposes five criteria as necessary to reduce the risk of a tether system failure: (1) Established strength properties, (2) minimum factor of safety, (3) launch vehicle constraint, (4) no damage displayed before launch, and (5) protection from launch vehicle exhaust plume.

1. Established Strength Properties

The FAA would require that an eligible tether system have established strength properties that would not yield or fail under the maximum dynamic load on the system or under a load equivalent to two times the maximum potential engine thrust.

Because some operators may not readily know the maximum dynamic load for their tether systems, the FAA proposes an alternate means of determining whether the tether is of sufficient strength. If an operator does not know the maximum dynamic load, the operator may calculate the maximum load as follows: determine the maximum potential engine thrust of the tethered vehicle and then multiply the maximum engine thrust by a factor of two. Using the maximum potential engine thrust of two is an industry standard for estimating the dynamic load of any structural system.[4]

2. Minimum Factor of Safety

The FAA would require operators to multiply the maximum load by a minimum factor of safety[5] of 3.0 for

[2] Models from the random sampling consisted of the Broderson IC20, Broderson IC35, Case 586G, JCB 930, John Deere 486E, Genie GTH5519, Genie GTH636, Genie GTH644, Gradall G6–42Z, Gradall G6–42P, Lull 644E–42.

[3] Some operators provided voluntary information on their tether systems. The FAA looked at the different vehicles' dry weights relative to the crane or forklift weight capacity.

[4] *See* A.E.H. Love, A Treatise on the Mathematical Theory of Elasticity, 179–180, Cambridge University Press (2d ed. 1906).

[5] A factor of safety of 1.0 implies that the design meets minimum requirements, but is on the point of failure with design uncertainties and no margin for variation or error. A factor of safety less than 1.0 means the design does not meet the minimum requirements and is in a failed state. A factor of safety greater than 1.0 means the design exceeds the

yield stress and 5.0 for ultimate stress. All components would have to have established strength properties that could withstand the maximum load multiplied by the factors of safety. The FAA chose the proposed factors of safety based on their successful history in a similar context.

The U.S. Air Force has used these same factors for similar operations. The U.S. Air Force conducts rocket operations at the Eastern and Western Ranges, including of tethered and ground-based systems. It recommends a minimum factor of safety of 3.0 for yield stress,[6] and a factor of safety of 5.0 for ultimate stress,[7] for the design of ground-based systems. This includes the tether and its attachments to launch facilities or ground equipment.[8] This means that for a tether system, the components within the system would be able to endure three times the force required to permanently deform the components, and five times the force required to break the components. The U.S. Air Force has not experienced any tether failures, even for a Minuteman launch, using these factors.

3. Launch Vehicle Constraint

The FAA proposes that the launch vehicle be constrained so that its flight cannot exceed 75 feet AGL. This altitude limit is based on the FAA's assessment of historical data on tether lengths and on the height of cranes and forklifts to determine a safe maximum altitude for tether systems. Based on this assessment, the FAA calculated an average crane or forklift height and an average tether length. The FAA then added these two values together to determine the launch vehicle's potential altitude.

Crane and forklift data from previous tethered launches and sampling indicate that the average height of the crane or forklift in a tether system is 43 feet. There were gaps in the data because the information was voluntary, and not all operators provided it. To fill the gaps, the FAA examined random samples of different crane and forklift heights, which indicated that operators typically use mid-sized cranes and forklifts to conduct their tethered operations. The FAA then took samples of mid-sized cranes and forklifts and averaged their heights and weight capacities to determine their physical limitations. The FAA obtained the samples from online brochures of manufacturers of cranes and forklifts.[9] The sample information also indicates that the average crane or forklift height is approximately 43 feet.

A launch vehicle's potential altitude is a crucial element in determining how far debris can travel in the event of a crash or an explosion. Large tether lengths allow for high altitude flights, while short tether lengths limit the vehicle to low altitudes. This means that a tether system failure during flight can result in large vehicle ranges for long tethers and short vehicle ranges for short tethers, because altitude and range are proportional. In order to reduce the risk to the public during tethered launches, the tether length must not be too long. An appropriate length is also necessary to prevent hazardous events, such as the entanglement of the tether with launch support structures or other facilities. Moreover, an appropriate tether length would prevent a controlled airspace incursion.

The FAA assumed that the maximum tether length for the average crane or forklift tether system would not be greater than the crane or forklift height because such a tether length could allow a launch vehicle to hit the ground and possibly explode. The FAA also assumed that the tether must be given room to stretch, because a 43-foot tether attached to a 43-foot high crane could allow the launch vehicle to hit the ground when the length of the vehicle and the elasticity of the tether are taken into account. Based on these assumptions, the FAA concluded that the tether length should be less than 43 feet.

The FAA examined past tether waiver applications to determine the appropriate tether length. The tether waiver data showed that the maximum tether length operators typically use is approximately 32 feet. The FAA would use a tether length of 32 feet, which provides a margin of 11 feet to account for the tether's elasticity and the length of the vehicle, to calculate maximum altitude. This length is appropriate and reasonable for tethered flights because past tethered flights have demonstrated that the length allows the vehicle sufficient lateral movement for operators to conduct tethered activities, while limiting the vehicle to low altitudes and thereby reducing the risk to the public.

When the average crane or forklift height of 43 feet is added to an appropriate tether length of 32 feet, the result is a maximum potential altitude of approximately 75 feet for the tethered vehicle. Accordingly, the FAA proposes to require that the tether system physically constrain the launch vehicle within an altitude of 75 feet AGL. This altitude does not require operators to use 43-foot high cranes or 32-foot long tethers; those measurements were only used to calculate an appropriate maximum altitude for a tethered launch that would not require FAA oversight. The proposed maximum altitude would protect the public by limiting the launch vehicle's range.

4. No Damage Displayed Before Launch (§ 400.2(c)(3))

The FAA would require that the tether system show no visual component damage before each launch. This requirement would reduce the risk of a tether system failure due to pre-existing damage. A visual check of the tether system before each launch could prevent failure by identifying signs of damage such as component fatigue, fracture, wear, creep, corrosion, yielding, or thermal shock. While the initial stages of some of these forms of damage may not be visible to the naked eye, they may eventually become visible. The FAA offers the following definitions of these terms as guidance in conducting the visual check:

- *Fatigue* is the progressive and localized structural damage that occurs when a material is subjected to cyclic loading. Fatigue occurs when a material is stressed repeatedly.
- *Fracture* is the local separation of an object or material into two or more pieces under the action of stress.
- *Wear* is the erosion of material from a solid surface by the action of another surface. Wear is related to surface interactions and more specifically to the removal of material from a surface as a result of mechanical action.
- *Creep* is the tendency of a solid material to move slowly or deform permanently under the influence of stresses.
- *Corrosion* is the disintegration of an engineered material into its constituent atoms due to chemical reactions with its surroundings.
- *Yielding* is when a material begins to deform plastically; when the yield point is passed, some fraction of the deformation will be permanent and non-reversible.
- *Thermal shock* is cracking as a result of rapid temperature change.

requirements by a multiple of that factor of safety and is in a safety state.

[6] Yield stress is the elastic limit.

[7] Ultimate stress is when breakage occurs.

[8] Nicholas E. Martino, *Design and Analysis Guidelines for Launch Vehicle Tether Systems,* Aerospace Report No. ATR–2008 (5377)–1, The Aerospace Corporation (Sept. 30, 2007). This report is available in the docket for this rulemaking (Docket No. FAA–2012–0045).

[9] These included Broderson Manufacturing Corp.; JCB; Genie; and Gradall Industries, Inc.

5. Protection From Launch Vehicle Exhaust Plume

The FAA would require an operator to insulate or locate the tether system such that it will not experience thermal damage due to a launch vehicle's exhaust. This requirement would mitigate the risk of a tether system failure due to thermal damage. Components exposed to the heat emitted from a launch vehicle's exhaust plume may be damaged or severely weakened. Metallic components, for example, that are exposed to a vehicle's exhaust plume may not visually show damage; however, all structural materials suffer significant strength degradation at elevated temperatures.

D. Proposed Separation Distances (§ 400.2(c)(3))

The FAA proposes that tethered launches be conducted at a sufficient distance from the public and from property belonging to members of the public to mitigate the effects when a launch vehicle unintentionally separates from the tether system. A launch vehicle may transfer unanticipated loads into the tether system, resulting in tether system failure and vehicle separation. Although a properly designed and constructed tether system should not fail, adding distance between the launch point and members of the public is a prudent and relatively simple and inexpensive safety measure to implement.

The FAA computed its proposed separation distances by first calculating a conservative maximum range of a vehicle that broke free of the tether system, and then calculating the hazardous fragment distance from the point of impact based on the type and amount of propellants onboard. Table A—Separation Distances for Tethered Launches in proposed § 400.2 would contain the separation distances required for a tethered launch that was excluded from chapter III. Each distance calculation in Table A is discussed below.

1. The Maximum Range of the Vehicle Released From the Tether

To determine a launch vehicle's maximum range, the FAA used Newton's equations of motion to estimate the maximum possible distance a vehicle that broke free of a tether could travel. The FAA simulated the scenarios where a tether system failed, and the vehicle followed a ballistic trajectory to the ground. The analysis consisted of the following assumptions: (1) The vehicle would be non-propulsive upon release; (2) the initial release velocity of the vehicle was maximized; (3) the tether's pull would not reduce the vehicle's velocity; (4) the tether would fully extend upon release; (5) the release angle of the vehicle would be the angle that provided the maximum range; and (6) the vehicle would fly through a vacuum. Except for the non-propulsive nature of the vehicle, all assumptions are conservative from a public safety perspective. The non-propulsive assumption is reasonable because a vehicle that broke free of a tether would most likely be unstable and not able to sustain flight in any particular direction.

The FAA also conducted a computer simulation of the same scenarios, using a trajectory analysis tool to verify the validity of the FAA's maximum range calculations. The numerical results from the computer simulation were consistent with the results from the FAA's computational analysis.

2. The Hazardous Fragment Distance Based on the Propellant Onboard

Upon impact at its maximum range, a launch vehicle with liquid propellants has the potential to explode, creating both overpressure and debris hazards. Explosive hazards associated with propellant quantities up to 5,000 pounds are driven by fragment hazards. The FAA used the formulas provided in Table 1 below to determine the hazardous fragment distance given a launch vehicle impact. This distance is a function of the net explosive weight (NEW), or the explosive equivalent of the propellants used on the launch vehicle.[10] Depending on the type of propellant, the explosive equivalent may vary from 10 to 20 percent, in accordance with Table E–2 of part 420.[11] For purposes of this rulemaking, the FAA applied a maximum NEW value of 20 percent for all propellant types. Using this conservative assumption simplifies the proposed rule.

TABLE 1—HAZARDOUS FRAGMENT DISTANCE [12]

Net Explosive Weight (NEW)	Hazardous fragment distance (d), feet
≤0.5 pounds	d = 236
0.5 pounds<NEW <100 pounds.	d = 291.3 + [79.2 *ln(NEW)]
100 pounds ≤ NEW ≤1000 pounds.	d = −1133.9 + [389 *ln(NEW)]

NEW is in pounds; d is in feet; ln is natural logarithm.

The hazardous fragment distance and NEW relationship of Table 1 is based on data obtained from Department of Defense Explosive Safety Board Technical Paper 16.[13] Table 1 provides the formulas for NEW of less than 100 pounds and for quantities between 100 and 1,000 pounds.[14] The Department of Defense Explosive Safety Board conducted tests that accounted for hazardous debris fragments based on a fragment that would cause a fatality, namely, one with a kinetic energy at impact of 58 foot-pounds. The hazardous fragment distance is the distance that a person approximately 6 feet tall and 1 foot wide would have a 1 percent probability of being struck by a fragment with a kinetic energy of 58 foot-pounds or greater, given an explosive event at a given NEW.[15] Because the Department of Defense, NASA, and the FAA have consistently applied the same standard, the hazardous fragment distance formulas provided in Table 1 provide an accepted level of safety to the general public.

3. Table A—Separation Distances for Tethered Launches

The FAA added the maximum impact range and the hazardous fragment distance results to calculate the total separation distance in proposed Table A. Proposed Table A would represent the distance from the launch point at which people and property belonging to the public would be safe from a launch vehicle mishap. This separation distance would be proportional to the amount of propellant on board the launch vehicle. That is, the greater the propellant on board, the greater the required separation distance. Distances would start at a value corresponding to a propellant load between 1 and 500 pounds and increase in increments of 500 pounds up to a maximum of 4,501 to 5,000 pounds. Note that the FAA's proposed separation distances would only be effective if the launch vehicle—

- Was operated within an altitude of 75 feet AGL;

[10] The definitions of NEW and explosive equivalent weight are provided in 14 CFR 420.5.

[11] *Explosive Siting Requirements, Notice of Proposed Rulemaking,* 76 FR 8923 (Feb. 16, 2011).

[12] *See* DOD Ammunition and Explosive Safety standards, DoD 6055.9–STD, October 5, 2004, Table C9.T2.

[13] Department of Defense Explosive Safety Board Technical Paper 16, rev. 2, *Methodologies for Calculating Primary Fragment Characteristics* (2005).

[14] For NEW of 0.5 pounds or less, the Department of Defense has chosen to use a distance of 236 feet. Because this rule proposes a cap of 5,000 pounds of propellant, the table accounts for up to the resulting maximum NEW of 1,000 pounds.

[15] *Explosive Siting Requirements, Notice of Proposed Rulemaking,* 76 FR 8923 (Feb. 16, 2011).

- Carried no more than 5,000 pounds of propellant; and
- Had a liquid or hybrid engine.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

Currently, the FAA has licensing authority over tethered launches, which are considered launches under chapter III unless they meet the definition of an amateur rocket launch.[16] To conduct such tethered non-amateur rocket launches, operators must obtain a launch license, permit or apply for a waiver from chapter III. Applying for waivers, licenses and permits impose a financial burden on vehicle operators and the FAA because of time and resources required to create and analyze these applications.

The proposed rule establishes clear and simple criteria for an effective tether system. In addition, it proposes vehicle and operational criteria as added measures to protect the public in the event of a tether system failure. Operators would not have to apply for a launch license, permit or waiver from chapter III to conduct tethered launches of non-amateur rockets[17] that meet the proposed criteria for an effective tether system and the vehicle and operational criteria. Operators who meet the proposed criteria would not have to incur the costs of applying for a launch license, permit or waiver and would not have to sustain the costs associated with delay in the processing of these applications. The FAA would not have to conduct case-by-case analyses of tethered launches that meet the proposed criteria to verify public safety from a launch vehicle explosion or confirm that the tether system would not fail. Furthermore, launch operators that conduct tethered launches would not be compelled to follow the criteria in this proposal as they would still have the option of applying for a launch license, permit or waiver under chapter III. Therefore, the proposed rule imposes no additional requirements on operators, but provides an alternative to conducting a tethered launch under chapter III. If the operator deemed it more cost effective to apply for a license, permit or waiver than to follow the criteria proposed here, the operator would have that option.

For the reasons discussed, the rule would be cost relieving to both operators and the FAA. The FAA requests comments with supporting justification about the agency's determination of minimal impact.

The FAA has determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule is expected to provide an alternative to conducting tethered launches under chapter III and therefore could alleviate the financial burden on operators who conduct tethered launches of applying for a launch license, permit or waiver to chapter III if they follow the requirements established in the proposal. The expected outcome would therefore have either a cost saving impact or no impact on small entities affected by the proposed rule.

Therefore, the FAA certifies this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any compliance costs unique to small entities. Please provide detailed supporting information.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, establishing standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long

[16] Launches of amateur rockets are excluded from the requirements of chapter III. *See* 14 CFR 400.2 (2011).

[17] Operators launching amateur rockets on a tether would still be subject to part 101 and would continue to be excluded from chapter III.

as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 12866

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

B. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's web page at *http://www.fdsys.gov.* Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 400

Space transportation and exploration; licensing.

14 CFR Part 401

Space transportation and exploration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter III of Title 14 Code of Federal Regulations as follows:

PART 400—BASIS AND SCOPE

1. The authority citation for part 400 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

2. Revise § 400.2 to read as follows:

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 51 U.S.C. subtitle V, chapter 509, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to—

(a) Space activities carried out by the United States Government on behalf of the United States government;

(b) The launch of an amateur rocket as defined in § 1.1 of chapter I; or

(c) A launch that meets the following criteria:

(1) *Launch vehicle.* The launch vehicle must—

(i) Be unmanned;

(ii) Be powered by a liquid or hybrid rocket motor; and

(iii) Carry no more than 5,000 pounds of propellant.

(2) *Tether system.* The tether system must—

(i) Have established strength properties that will not yield or fail under—

(A) The maximum dynamic load on the system; or

(B) A load equivalent to two times the maximum potential engine thrust.

(ii) Have a minimum safety factor of 3.0 for yield stress and 5.0 for ultimate stress.

(iii) Constrain the launch vehicle within 75 feet above ground level.

(iv) Display no damage prior to the launch.

(v) Be insulated or located such that it will not experience thermal damage due to the launch vehicle's exhaust.

(3) *Separation distances.* The launch operator must separate its launch from the public and the property of the public by a distance no less than that provided for each quantity of propellant listed in Table A of this section.

TABLE A—SEPARATION DISTANCES FOR TETHERED LAUNCHES

Propellant carried (lbs)	Distance (ft) from the launch point
1–500	900
501–1,000	1,200
1,001–1,500	1,350
1,501–2,000	1,450
2,001–2,500	1,550
2,501–3,000	1,600
3,001–3,500	1,650
3,501–4,000	1,700
4,001–4,500	1,750
4,501–5,000	1,800

PART 401—ORGANIZATION AND DEFINITIONS

3. The authority citation for part 401 continues to read as follows:

Authority: 51 U.S.C. 50101–50923.

4. Amend § 401.5 by adding the definition of *tether system* in alphabetical order to read as follows:

§ 401.5 Definitions.

* * * * *

Tether system means a device that contains launch vehicle hazards by physically constraining a launch vehicle in flight to a specified range from its launch point. A tether system includes all components, from the point of attachment to the vehicle to a solid base, that experience load during a tethered launch.

* * * * *

Issued in Washington, DC, on August 16, 2012.

George C. Nield,

Associate Administrator, Commercial Space Transportation.

[FR Doc. 2012–20686 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

RIN 0625–AA91

Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 10, 2012, the Department of Commerce (the Department) published a proposed rule in the **Federal Register** requesting comments regarding a proposed modification to the definition of factual information and to the time limits for the submission of factual information in antidumping (AD) and countervailing duty (CVD) proceedings. The Department has decided to extend the comment period, making the new deadline for the submission of public comment September 24, 2012.

DATES: To be assured of consideration, comments must be received no later than September 24, 2012.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov*, Docket No. ITA–2012–0004, unless the commenter does not have access to the internet. Commenters who do not have access to the internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to Paul Piquado, Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625–AA91.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and online at *http://www.regulations.gov* and on the Department's Web site at *http://www.trade.gov/ia/*.

Any questions concerning file formatting, document conversion, access on the internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster-support@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482–5052 or Charles Vannatta at (202) 482–4036.

SUPPLEMENTARY INFORMATION: On July 10, 2012, the Department published a proposed rule in the **Federal Register** requesting comments regarding a proposed modification to the definition of factual information and to the time limits for the submission of factual information in AD and CVD proceedings. *See Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information,* 77 FR 40534 (July 10, 2012). That notice indicated that public comments are due on August 24, 2012. On August 14, 2012, the Committee to Support U.S. Trade Laws requested that the Department extend this deadline. In response to this request, and to ensure parties have the opportunity to prepare thorough and comprehensive comments, the Department is extending the deadline for submitting comments by thirty days, until September 24, 2012. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

Dated: August 16, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–20785 Filed 8–22–12; 8:45 am]

BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0152; FRL–9718–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; the 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the District of Columbia State Implementation Plan (SIP) revision submitted by the District of Columbia, through the District Department of the Environment (DDOE), on April 2, 2008. The emissions inventory is part of the District of Columbia's April 2, 2008 SIP revision that was submitted to meet nonattainment requirements related to the District of Columbia's portion of the Washington DC-MD-VA nonattainment area (hereafter referred to as DC Area or Area) for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year $PM_{2.5}$ emissions inventory submitted by DDOE in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0152 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0152, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0152. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at khadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of SIP Revision
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 18, 1997 (62 FR 38652), EPA published the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air-quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS and, by January 2001, established a complete set of air-quality monitors. On January 5, 2005, EPA published initial air-quality designations for the 1997 $PM_{2.5}$ NAAQS (70 FR 944), which became effective on April 5, 2005, based on air-quality monitoring data for calendar years 2001–03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) as that which was promulgated at 70 FR 944. As a result of this supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The DC Area which is the subject of this rulemaking was included in the list of areas not attaining the 1997 $PM_{2.5}$ NAAQS.

On January 12, 2009 (74 FR 1146), EPA determined that the District of Columbia had attained the 1997 $PM_{2.5}$ NAAQS in the DC Area. That determination was based upon quality assured, quality controlled and certified ambient air monitoring data that showed the Area had monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2004–2006 monitoring period and that continued to show attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2005–2007 data. The January 12, 2009 determination suspended the requirements for the District of Columbia to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 $PM_{2.5}$ NAAQS. On February 6,

2012, DDOE submitted a request for withdrawal of the District of Columbia 1997 $PM_{2.5}$ SIP revisions including the withdrawal of the attainment plan, analysis of reasonably available control measures, attainment demonstration, contingency plans and mobile source budgets. To meet the requirements of CAA section 172(c)(3), DDOE did not request the withdrawal of the 2002 base year emission inventory portion of the 1997 $PM_{2.5}$ SIP revisions. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by DDOE on April 2, 2008 includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by DDOE. The year 2002 was selected by DDOE as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory can be found in Appendix B of the April 3, 2008 SIP submittal.

Table 1 provides a summary of the annual 2002 emissions of NO_X, VOCs, $PM_{2.5}$, PM_{10}, NH_3, and SO_2 which were included in the District of Columbia submittal.

TABLE 1—EMISSIONS OF POLLUTANTS IN TONS PER YEAR (TPY)

Pollutant	NO_X	VOCs	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Emissions (TPY)	15,401.08	15,877.34	1,076.58	3,395.81	407.08	3,597.33

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The 2002 emissions inventory was based on data developed by DDOE and the Metropolitan Washington Council of Government (MWCOG). The data were developed according to current EPA emissions inventory guidance, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' August 2005. EPA agrees that the process used to develop this emissions inventory is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories. More information regarding the review of the base year inventory can be found in the technical support document (TSD) titled ''2002 SIP Base Year Inventory'' that is located in this docket.

IV. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the District of Columbia through DDOE on April 2, 2008. We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the $PM_{2.5}$ 2002 base year emissions inventory portion of the District of Columbia SIP, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 8, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–20779 Filed 8–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0929; FRL–9718–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the attainment demonstration portion of the attainment plan submitted by the State of Maryland through the Maryland Department of the Environment (MDE) as a State Implementation Plan (SIP) revision that demonstrates attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, moderate nonattainment area (Philadelphia Area) by the applicable attainment date of June 2011. EPA has determined that Maryland's SIP revision meets the applicable requirements of the Clean Air Act (CAA). This action is being taken in accordance with the CAA.

DATES: Written comments must be received on or before September 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0929 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0929, Donna Mastro, Acting Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0929. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following is provided to aid in locating information in this preamble.

I. What action is EPA proposing to take?
II. What is the background for EPA's proposed action?
III. What are the CAA requirements for a moderate 8-hour ozone nonattainment area?
IV. What is included in Maryland's SIP submittal?
V. What is EPA's review of Maryland's modeled attainment demonstration and weight of evidence analysis for the Philadelphia area?
VI. Proposed Action
VII. Statutory and Executive Order Reviews

I. What action is EPA proposing to take?

EPA is proposing to approve the attainment demonstration element of a SIP revision submitted by MDE to EPA on June 4, 2007. The June 4, 2007 SIP revision consisted of Maryland's attainment plan for the 1997 8-hour ozone NAAQS for the Philadelphia Area. The ozone attainment plan submitted on June 4, 2007 included the attainment demonstration for the Philadelphia Area and its associated motor vehicle emission budgets (MVEBs) used for transportation conformity purposes in Cecil County, Maryland. The Maryland attainment plan also included a 2002 base year emissions inventory, an analysis of the reasonably available control measures/reasonably available control technology (RACM/RACT), the 2008 rate of progress (ROP) plan and its associated MVEBs, and contingency measures. The ROP plan and its MVEBs, 2002 base year emissions inventory, RACM/RACT analysis, and contingency measures (elements of the June 4, 2007 attainment plan) were approved on June 11, 2010 (75 FR 33172). Therefore, in this action, EPA is only proposing to approve Maryland's attainment demonstration for the 1997 8-hour ozone NAAQS for the Philadelphia Area.

In a separate and concurrent process, EPA is conducting a process to find the MVEBs for Cecil County associated with the Maryland attainment demonstration for the Philadelphia Area adequate. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for Cecil County in the June 4, 2007 SIP revision's attainment demonstration for the Philadelphia Area. That notice will inform the public of the availability of the Maryland SIP revision on MDE's Web site. Interested members of the public could access Maryland's June 4, 2007 SIP revision on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2008–0929. Following EPA's public comment period, responses to

any comments received will be addressed.

EPA has determined that Maryland's attainment demonstration meets the applicable requirements of the CAA because it demonstrates attainment by the applicable date of June 15, 2011.[1] EPA's analysis and findings are discussed in this proposed rulemaking. In addition, a technical support document (TSD) for this proposal entitled ''Technical Support Document for the Modeling and Weight of Evidence Portions of the Cecil County, Maryland 8-Hour Ozone State Implementation Plan,'' dated June 22, 2012 (referred to herein as the Attainment TSD) is available on line at *www.regulations.gov*, Docket No. EPA–R03–OAR–2008–0929. The Attainment TSD provides additional explanation on EPA's analysis supporting this proposed approval of the attainment demonstration.

II. What is the background for EPA's proposed action?

On June 4, 2007, MDE submitted a comprehensive SIP revision to meet the requirements for an attainment plan for the 1997 8-hour ozone NAAQS for the Philadelphia Area. On May 8, 2009 (74 FR 21599), EPA proposed to disapprove the ozone attainment demonstration element of the June 4, 2007 attainment plan of the comprehensive SIP revision. EPA proposed to disapprove the attainment demonstration of the 1997 8-hour NAAQS for the Philadelphia Area because EPA determined that the photochemical modeling did not demonstrate attainment, and the weight of evidence analysis used to support the attainment demonstration did not provide sufficient evidence that the Philadelphia Area would attain the 1997 8-hour ozone NAAQS by the June 2010 deadline for the ozone nonattainment areas classified as moderate. On December 9, 2011 (76 FR 76929), EPA withdrew the May 8, 2009 proposed disapproval of the attainment demonstration for the Philadelphia Area based on ambient air quality monitoring data demonstrating attainment.

Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation. Therefore, the Philadelphia Area was to attain by June 15, 2010. See 40 CFR 51.903 and 69 FR 23951 (April 30, 2004). However, the Philadelphia Area qualified for a one year extension of its attainment date, based on the complete, certified ambient air quality data for the 2009 ozone season. See 40 CFR 51.907. On January 21, 2011 (76 FR 3840), EPA approved a one year extension of the Philadelphia Area's attainment date from June 15, 2010 to June 15, 2011, based in part on air quality data recorded during the 2009 ozone season.

On March 26, 2012 (77 FR 17341), EPA published two determinations regarding the 1997 8-hour ozone NAAQS for the Philadelphia Area. First, EPA made a clean data determination that the Philadelphia Area had attained the 1997 8-hour ozone NAAQS. This determination was based upon complete, quality assured, and certified ambient air monitoring data that showed the Philadelphia Area had monitored attainment of the 1997 8-hour ozone NAAQS for the 2008–2010 monitoring period. Ambient air monitoring data for the 2009–2011 monitoring period is consistent with continued attainment. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the Philadelphia Area had attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2011.

III. What are the CAA requirements for a moderate 8-hour ozone nonattainment area?

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 1997 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 1997 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 1997 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, on April 30, 2004 (69 FR 23951), EPA promulgated its Phase 1 Implementation Rule which provided how areas designated nonattainment for the 1997 8-hour ozone standard would be classified. Among those nonattainment areas is the Philadelphia Area. The Philadelphia Area includes all three counties in Delaware, five counties in eastern Pennsylvania, one county in Maryland, and eight counties in southern New Jersey. Therefore, the Philadelphia Area includes Cecil County in Maryland. EPA's Phase 2 Implementation Rule published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. See 40 CFR 51.908(a).

Pursuant to the Phase 1 Implementation Rule, an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at or above 0.12 ppm. Based on this criterion, the Philadelphia Area was classified under subpart 2 as a moderate nonattainment area. The Phase 2 Implementation Rule addressed the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 Implementation Rules outline the required SIP elements and deadlines for those various requirements in areas designated as moderate nonattainment.

IV. What is included in Maryland's SIP submittal?

On June 4, 2007, Maryland submitted a comprehensive attainment plan as a SIP revision for the 1997 8-hour ozone NAAQS. The SIP revision included an attainment demonstration with MVEBs, the ROP plan with MVEBs, a RACM/RACT analysis, the 2002 base year emissions inventory, and contingency measures. The attainment demonstration of the June 4, 2007 SIP submittal is the only subject of this proposed rulemaking. In a separate and concurrent process, EPA is proposing an adequacy determination for the 2009 MVEBs associated with the ozone attainment demonstration for Cecil County in Maryland. The other elements of the June 4, 2007 SIP submittal were approved by EPA on June 11, 2010 (75 FR 33172).

V. What is EPA's review of Maryland's modeled attainment demonstration and weight of evidence analysis for the Philadelphia area?

Section 110(a)(2)(K) of the CAA requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that areas classified as moderate or above must use photochemical grid modeling or any other analytical method determined by the Administrator to be at least as effective to demonstrate attainment of the ozone health-based standard by the required attainment date (November 29, 2005, 70 FR 71612, and 40 CFR 51.908). On April 30, 2004 (69 FR 23951 and 40

[1] As explained in detail in Section II, EPA approved on January 21, 2011 a one-year extension of the Philadelphia Area's attainment date from June 2010 to June 2011. 76 FR 3840.

CFR 51.903), EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. On April 30, 2004 (69 FR 23858), EPA followed these procedures and classified the Philadelphia Area as moderate, and the nonattainment area was required to attain the 1997 8-hour ozone standard by June 2010. Because the attainment date was June 2010 for moderate areas, states had to achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced and show attainment during the last complete ozone season before the 2010 deadline.

A. EPA Guidance for Using Models To Determine Attainment

EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, EPA–454/B–07–002, April 2007. The photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

A description of how the attainment demonstration from the June 4, 2007 SIP revision addresses this EPA modeling guidance for a modeled attainment demonstration can be found in the Attainment TSD, available on line at *www.regulations.gov*, Docket number EPA–R03–OAR–2008–0929.

In the June 4, 2007 SIP revision, the photochemical grid model used projected emissions for 2009, including emission changes due to regulations Maryland and its neighboring states were planning to implement and expected growth by the 2009 ozone season. Meteorological conditions from 2002, the same as the base year modeling, were used in the projection modeling for 2009. Using the base case meteorology allows the effect of changes in states' emissions to be determined without being influenced by yearly fluctuations in meteorology and is consistent with EPA guidance.

The attainment test used in the Philadelphia Area modeling demonstration involved the application of model-based relative response factors (RRFs) to base year design values at each monitor to produce projected future year design values (2009). The projected 2009 design values represent design values that should result from emission controls Maryland and other states planned to have in place in 2009. As discussed in the Attainment TSD, the 2009 design values should be less than or equal to 84 parts per billion (ppb) at all monitoring stations to meet the attainment test. The SIP modeling predicts that in 2009, the Philadelphia Area will not pass the attainment test since design values are projected to be over the 84 ppb standard.

In summary, the basic photochemical grid modeling presented in the Maryland SIP revision meets EPA's guidelines and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. However, when EPA's attainment test is applied to the modeling results, the 2009 ozone design value is predicted to be 91 ppb in the Philadelphia Area. Thus, based on EPA's modeled attainment test, the Philadelphia Area has not demonstrated that it will reach attainment of the 1997 8-hour ozone standard in the attainment year with the modeled emission reduction strategies committed to by Maryland and the neighboring states in the Ozone Transport Region (OTR). Therefore, a weight of evidence (WOE) analysis was used by Maryland and reviewed by EPA to demonstrate attainment of the 1997 8-hour ozone standard in the Philadelphia Area.

B. Weight of Evidence Demonstration

EPA's modeling guidance describes how to use a photochemical grid model and additional analytical methods to complete a WOE analysis to estimate if emissions control strategies will lead to attainment of the 1997 8-hour ozone NAAQS. A WOE analysis is a supporting analysis that helps to determine if the results of the photochemical modeling system are correctly (or not correctly) predicting future air quality.

The WOE analysis presented in the Maryland SIP revision describes the analyses performed, databases used, key assumptions and outcomes of each analysis, and why the evidence, viewed as a whole, supports a conclusion that the Philadelphia Area will attain the NAAQS despite the model prediction that some monitors' future design values exceed the 1997 8-hour ozone NAAQS.

EPA's review of the WOE analysis in the Attainment TSD included the following: (1) A comparison of model-predicted 2009 ozone design values to monitored design values for 2006–2011; (2) an analysis of recent ozone trends in the Philadelphia Area; and (3) alternative methods for calculating the 2009 ozone design value. As discussed in detail in the Attainment TSD, the 2009 model over predicted ozone design values for 2006–2011 for most cases. Further, in the Attainment TSD, EPA's analysis concurs with Maryland's analysis of significant declining trends in the Philadelphia Area ozone design values. The Attainment TSD concluded that additional emissions reductions have continued to occur due mostly to local controls in each nonattainment area and to a few reductions in major sources due to initiatives in the OTR. The Attainment TSD noted that monitored ozone design values for each of the Philadelphia Area monitors continued to decline and to show attainment in 2010 and 2011.

As discussed in detail in the Attainment TSD, Maryland's attainment demonstration also asserted an alternative baseline concentration could be used to demonstrate attainment. However, EPA determined in the Attainment TSD that the modeling would still show nonattainment even with this alternative baseline value. Likewise, EPA determined in the Attainment TSD that Maryland's recalculation of 2009 modeled ozone design values with a relative response factor in Maryland's June 4, 2007 SIP revision reduced the modeled 2009 ozone design values slightly but the model still over predicts the actual monitored 2009 design values. In conclusion, in the Attainment TSD, EPA determined with the benefit of 2009 monitored design values that the model in Maryland's June 4, 2007 SIP revision overpredicts actual concentrations even when model adjustments are made as discussed herein to attempt to account for model over prediction.

EPA has determined that the Maryland photochemical grid modeling results predict a 2009 projected design value well above the 1997 8-hour ozone NAAQS for the Philadelphia Area. However, after taking into account WOE arguments regarding model over prediction of the 2009 monitored design values and recent ozone design value trends, which show attainment of the standard by 2010, EPA determined that the Maryland SIP has demonstrated attainment of the ozone standard by the extended attainment date of June 2011 as discussed in detail in the Attainment TSD.

V. Proposed Action

EPA is proposing to approve the 1997 8-hour ozone NAAQS attainment demonstration, included in Maryland's June 4, 2007 attainment plan SIP revision, as demonstrating attainment for the Philadelphia Area by the applicable attainment date of June 15, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the 1997 8-hour ozone attainment demonstration for the Philadelphia Area submitted by Maryland on June 4, 2007, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 8, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–20780 Filed 8–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0511; FRL–9718–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve several State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions pertain to adoption by Maryland of the California Low Emission Vehicle Program (LEV), or California Clean Car Program. The underlying Maryland regulations require all new 2011 and subsequent model year passenger cars, light trucks, and medium-duty vehicles having a gross vehicle weight rating (GVWR) of 14,000 pounds or less that are sold in Maryland to meet California emission standards.

The Clean Air Act (CAA) contains authority by which other states may adopt new motor vehicle emissions standards that are identical to California's standards. Specifically, Maryland has adopted California's light and medium-duty new vehicle standards by reference, and then submitted these rules as part of the State's SIP revision to EPA. The Maryland Clean Car program has two objectives. The first is to reduce emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs), both of which are precursors to the formation of ground level ozone pollution, from new motor vehicles sold in Maryland. The second objective of the program is to reduce greenhouse gas emissions from new motor vehicles weighing under 10,000 pounds GVWR. Maryland submitted supplemental SIP revisions to modify its own program to match updates by California to its program and to harmonize with recently established Federal (and California) greenhouse gas and fuel economy standards promulgated by EPA applicable to 2012–2016 model year vehicles of the same vehicle types covered by Maryland's rules. This action is being taken under the CAA.

DATES: Written comments must be received on or before September 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0511 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0511, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0511. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your

identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On December 20, 2007, the Maryland Department of the Environment submitted a revision (#07–16) to its SIP for its Low Emission Vehicle Program, also referred to in this notice as the Maryland Clean Car Program. On November 12, 2010, Maryland submitted a revision to the 2007 SIP submittal (#10–08) to amend its Clean Car Program rules to reflect changes made by California to its LEV regulations since the time they were originally adopted by Maryland. On June 22, 2011, Maryland submitted another SIP revision (#11–05) consisting of another update to its Clean Car regulations to adopt additional changes made by California to the California LEV rules since Maryland last updated its rules and submitted them to EPA as part of the November 2010 SIP submittal.

I. Description of the SIP Revisions
A. Background
1. Maryland's Air Quality With Respect to the Ozone NAAQS
2. What are the relevant statutory and regulatory requirements for Federal and California vehicle emission standards?
3. California's LEV Program
4. California Greenhouse Gas Standards
5. Federal Greenhouse Gas Vehicle Standards
B. Maryland's Clean Car Program
1. Overview—Maryland's Clean Car Program Rules
2. Maryland's Clean Car Program SIP Revisions
a. Maryland's December 2007 SIP Revision
b. Maryland's November 2010 SIP Revision
c. Maryland's June 2011 SIP Revision
II. Proposed EPA Action
III. Statutory and Executive Order Reviews

I. Description of the SIP Revision

A. Background

1. Maryland's Air Quality With Respect to the Ozone NAAQS

Under the 1990 CAA, eleven counties (and the City of Baltimore) in Maryland were classified as nonattainment under the 1-hour ozone NAAQS. These counties were distributed across three nonattainment areas: the Baltimore severe nonattainment area (Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, and the City of Baltimore); the Maryland portion of the Washington, DC-MD-VA serious nonattainment area (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), which was later reclassified to severe; and the Maryland portion of the Philadelphia-Wilmington-Trenton, PA-NJ-MD-DE severe nonattainment area (Cecil County). EPA revoked the 1-hour ozone NAAQS, effective June 15, 2005 (see EPA's final rule entitled ''Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked'' published in the August 3, 2005 **Federal Register**, 70 FR 4470). At the time EPA revoked the 1-hour ozone NAAQS, none of these Maryland counties had been redesignated to attainment.

Effective June 15, 2004, these same eleven Maryland counties (and the City of Baltimore) were designated by EPA as nonattainment with respect to the 1997 8-hour ozone NAAQS. Under the 1997 8-hour ozone NAAQS, these Maryland counties were again part of three separate nonattainment areas (distributed in the same means as the former 1-hour ozone standard) albeit with slightly different area names and classifications: The Baltimore, MD moderate nonattainment area; the Washington, DC-MD-VA moderate nonattainment area; and Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate nonattainment area.

Upon designation, each of these three nonattainment areas had attainment dates no later than June 2010. On February 28, 2012, EPA determined that the Washington area attained the 1997 8-hour ozone NAAQS by its June 15, 2010 attainment date (77 FR 11739).

EPA issued a 1-year attainment date extension (i.e., from June 2010 to June 2011) for the Philadelphia-Wilmington-Atlantic City 1997 8-hour ozone nonattainment area, via a final rule published in the January 21, 2011 **Federal Register** (76 FR 3840). On March 26, 2012, EPA determined that the Philadelphia-Wilmington-Atlantic City area attained the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date (77 FR 17341).

EPA issued a 1-year attainment date extension (i.e., from June 2010 to June 2011) for the Baltimore 1997 8-hour ozone nonattainment area, via a final rule published in the March 11, 2011 **Federal Register** (76 FR 13289). On February 1, 2012, EPA made a determination that (based on certified ambient air quality monitoring data from 2008–2010) the Baltimore area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. As a result, the Baltimore area was reclassified from moderate to serious 8-hour ozone nonattainment for the 1997 8-hour ozone NAAQS. Consequently, Maryland must submit SIP revisions for the Baltimore area to meet CAA serious ozone nonattainment requirements by September 2012.

On May 21, 2012, EPA designated the same eleven Maryland counties (and the City of Baltimore) as nonattainment for the 2008 8-hour ozone NAAQS (77 FR 30088). The Washington area and Maryland portion of the Philadelphia-Wilmington-Atlantic City area were classified as marginal and the Baltimore area was classified as moderate nonattainment under the 2008 8-hour ozone NAAQS.

2. What are the relevant statutory and regulatory requirements for Federal and California vehicle emission standards?

Vehicles sold in the United States are required by the CAA to be certified to meet U.S. Federal emission standards or to meet California's emission standards. States are forbidden from adopting their own standards, but may adopt California's emission standards for which EPA has granted a waiver of preemption.

Section 209 of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, EPA may waive that prohibition to any state that adopted its own vehicle emission standards prior to March 30, 1966. As California was the only state to do so, California has authority under the CAA to adopt its own motor vehicle emissions standards. California must demonstrate to EPA that its newly adopted standards will be ''* * * in the aggregate, at least as protective of public health and welfare as applicable Federal standards.'' EPA then must grant a waiver of preemption for California's standards, unless the demonstration fails to meet specific requirements set forth in section 209 of the CAA applicable to such a waiver demonstration.

Section 177 of the CAA authorizes other states to adopt California's standards in lieu of Federal vehicle standards, provided the state adopting California's standards does so at least two years prior to the model year in which they become effective and that EPA has issued a waiver of preemption to California for such standards.

In February 2000, EPA adopted the second tier of Federal motor vehicle standards enacted under the 1990 CAA, via a final rule published in the **Federal Register** on February 10, 2000 (65 FR 6698). These standards, referred to as the Tier 2 Federal emission standards (or Tier 2 standards) were phased in beginning with the 2004 model years, except in states that had formally adopted California's emission standards in lieu of the Federal standards.

3. California's LEV Program

In 1990, California's Air Resources Board (CARB) adopted its first generation of LEV standards applicable to light and medium duty vehicles. California's vehicle emission standards program is referred to as the California Low Emissions Vehicle Program (CA LEV), or simply as the LEV program. These LEV standards were phased-in beginning in model year 1994 through model year 2003. California adopted a second generation of CA LEV standards, known as LEV II, in 1999. LEV II was phased-in beginning with model year 2004 through model year 2010. EPA granted a Federal preemption waiver for California's LEV II program on April 22, 2003 (68 FR 19811).

In December 2000, CARB modified the LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. In 2006, CARB adopted technical amendments to its LEV II program that amended the evaporative emission test procedures, onboard refueling vapor recovery and spitback test procedures, exhaust emission test procedures, and vehicle emission control label requirements. These technical amendments align each of California's test procedures and label requirements with its Federal counterpart, in an effort to streamline and harmonize the California and Federal programs and to reduce manufacturer testing burdens and increase in-use compliance. On July 30, 2010, EPA published a notice in the **Federal Register** confirming that CARB's 2006 technical amendments are within-the-scope of existing waivers of preemption for CARB's LEV II program (75 FR 44948).

Under California's LEV II program, each vehicle manufacturer must show that their overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits become progressively lower each model year. The LEV II program requires auto manufacturers to include a ''smog index'' label on each vehicle sold, which is intended to inform consumers about the amount of pollution coming from that vehicle relative to other vehicles.

In addition to the LEV II requirements, California requires that minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer meet Zero Emission Vehicle (ZEV) standards, hereafter referred to as a ZEV program or ZEV mandate.

4. California Greenhouse Gas Vehicle Standards

California adopted Assembly Bill 1493 (A.B. 1493), into law in July 2002, which required CARB to develop and adopt greenhouse gas (GHG) emissions standards for light-duty vehicles. A.B. 1493 directed CARB to consider cost-effectiveness, technological capability, economic impacts, and flexibility for manufacturers in meeting the standard.

In August 2004, CARB approved GHG emissions standards for light-duty vehicles. CARB's standards regulated GHG emissions associated with vehicle operation, air conditioning operation and maintenance, and production of vehicle fuel. The standards apply to noncommercial light-duty passenger vehicles manufactured for model years 2009 and beyond. The standards, specified in terms of carbon dioxide (CO_2) equivalent emissions, apply to vehicles in two size classes: passenger cars and small light-duty trucks with a loaded vehicle weight rating of 3,750 pounds or less and to heavy light-duty trucks with a loaded vehicle weight rating greater than 3,750 pounds and a GVWR less than 8,500 pounds. The CO_2 equivalent emission standard for heavy light trucks includes noncommercial passenger trucks between 8,500 pounds and 10,000 pounds GVWR. The September 2005 CARB regulations set near-term standards (to be phased in between 2009 and 2012) and mid-term standards (to be phased in between 2013 and 2016). After 2016, the CARB GHG emissions standards are fixed.

Since CARB's adoption of GHG standards, at least thirteen other states (including Maryland) have also elected to adopt CARB's GHG standards (in conjunction with CA LEV standards) under the authority of section 177 of the CAA. In June 2009, EPA granted California's request for a waiver of preemption for its GHG standards, which was published in the July 8, 2009 **Federal Register** (74 FR 32744). Upon issuance of this waiver, California and other states that adopted California's standards were permitted to proceed to implement California's standards.

In January 2012, CARB approved a new emissions-control program for model years 2017 through 2025. The program combines the control of smog, soot and global warming gases and requirements for greater numbers of ZEV vehicles into a single package of standards called LEV III, or Advanced Clean Cars. EPA has not yet granted a waiver for California's standards for model year 2017 and beyond.

5. Federal Greenhouse Gas Vehicle Standards

EPA and the National Highway Traffic Safety Administration (NHTSA) established a national program to improve fuel economy of and to reduce GHG from light-duty motor vehicles, via a final rule published in the May 7, 2010 **Federal Register** (88 FR 25324). This rule affects new passenger cars, light-duty trucks, and medium duty passenger vehicles sold in model years 2012 through 2016. Under this national program, adopted in coordination with California, automobile manufacturers face a single set of national emissions standards that will meet both Federal and California emissions requirements. California enacted several actions to allow manufacturers to meet a single set of standards under the national GHG rules, allowing for compliance with California requirements through

compliance with federal standards—resulting in a harmonized approach to emissions control.

EPA and NHTSA issued a joint proposal in the December 1, 2011 **Federal Register** (76 FR 74854) to further reduce greenhouse gas emissions and to improve fuel economy of new light- and medium-duty vehicles sold beyond the 2016 model year. This proposed rule would extend the National Program beyond 2016 by tightening GHG and CAFE standards between model years 2017 and 2025.

B. Maryland's Clean Car Program

1. Overview—Maryland's Clean Car Program Rules

In order to address ambient air quality in the state, Maryland's legislature adopted and the Governor signed the Maryland Clean Cars Act of 2007, purpose of which was to implement the California's LEV program. This statute compelled the adoption by the Maryland Department of Environment of a final rule in November 2007 to implement California's LEV standards. This rule established a new Maryland regulatory chapter COMAR 26.11.34, entitled ''Low Emission Vehicle Program.''

The regulation requires all 2011 and newer model year passenger cars, light-duty trucks, and medium-duty vehicles having a GVWR of 14,000 pounds or less that are sold as new cars or are transferred in Maryland to meet the applicable California emissions standards. For purposes of the Maryland Clean Car Program, transfer means to sell, import, deliver, purchase, lease, rent, acquire, or receive a motor vehicle for titling or registration in Maryland. The purpose of the program is to achieve two air quality objectives. The first is to reduce emissions of NOx and VOCs, which are ground-level ozone precursor pollutants. The LEV program reduces emissions in a similar manner to the Federal Tier 2 program by use of declining fleet average non-methane organic gas (NMOG) emission standards, applicable to each vehicle manufacturer each year. Separate fleet average standards are not established for NOx, carbon monoxide (CO), particulate matter (PM), or formaldehyde as these emissions are controlled as a co-benefit of the NMOG fleet average (fleet average values for these pollutants are set by the certification standards for each set of California prescribed certification standards.) These allowable sets of standards range from LEV (the least stringent standard set) to ZEVs (the most stringent standard set). In between these fall: Ultra-Low Emission Vehicles (ULEV), Super-Ultra Low Emission Vehicles (SULEV), Partial Zero Emission Vehicles (PZEV), and Advanced Technology-Partial Zero Emission Vehicles (AT–PZEV). Each manufacturer may comply by selling a mix of vehicles meeting any of these standards, as long as their sales-weighted, overall average of the various standard sets meets the overall fleet average and ZEV requirements.

The second objective of the program is to reduce GHG emissions. To further both objectives, Maryland adopted California's ZEV program requirements, which serve as a means to promote advanced technology vehicles that are cleaner than traditional gasoline- and diesel-powered vehicles. The GHG standards were to phase-in between model year 2009 and 2016; however, recently passed Federal GHG standards began to be phased-in beginning with model year 2012. The GHG program also uses a fleet average compliance method, similar in methodology to that of the NMOG fleet average for the LEV program. Overall compliance is demonstrated by showing that the entire fleet of vehicles produced by each manufacturer (as distributed within the allowable standard sets) meets the specified fleet average NMOG and GHG standards.

California has reached an agreement with EPA to allow compliance with the Federal GHG standards as a compliance option for California's standards, between 2012 and 2016. Both the LEV and GHG standards for model year 2012–2016 light and medium duty vehicles are already in effect in Maryland.

2. Maryland's Clean Car Program SIP Revisions

a. Maryland's December 2007 SIP Revision

Maryland proposed adoption of its new regulations .01 to .14 under a new chapter, COMAR 26.11.34, entitled ''Low Emission Vehicle Program'' in the Maryland Register on August 31, 2007. The regulations were adopted on November 19, 2007, and became state effective on December 17, 2007. Maryland formally submitted a SIP revision for the Maryland Clean Car Program to EPA on December 20, 2007. This SIP revision contained Maryland's incorporation of California's LEV program regulations, which results in a declining fleet average standard (for each vehicle manufacturer) for both NMHC and GHGs, applicable to new model year 2011 and newer light-duty vehicles and trucks and medium-duty vehicles. Maryland's regulations established initial NMOG credit balances for manufacturer credit account balances to reconcile the schedule of the Maryland program to that of the earlier California program and to provide parity for manufacturers between Maryland and California at the onset of the Maryland program. Maryland's regulations in the 2007 SIP revision submittal also included ZEV program requirements for Maryland and established ZEV credit account balances to provide parity between California and Maryland with respect to the timing of Maryland's ZEV program. Finally, the 2007 SIP submittal contains general regulatory compliance provisions that extend California-defined rights to compliance with California's standards in Maryland.

b. Maryland's November 2010 SIP Revision

Subsequently, Maryland submitted a SIP revision on November 12, 2010 to submit updates made by the State to its LEV Program rule. Specifically, this SIP submittal includes changes made by Maryland to regulation .02 Incorporation by Reference under COMAR 26.11.34. This regulatory revision was adopted by Maryland on October 16, 2009 and became effective in Maryland on November 16, 2009. The purpose of the SIP revision including this rule revision was to update Maryland's incorporation by reference to be consistent with changes made by California to its LEV rules. Since the time that Maryland initially adopted California's rules in 2007, California had updated its rules to streamline its evaporative emissions requirements, to amend its on-board diagnostics and emissions warranty provisions, to amend its in-use vehicle recall provisions, to amend its smog label requirements, and to revise its ZEV methodology and credit accounting system. Although the changes made by California (and the resulting changes made by Maryland to its incorporation of California's rules by reference) are minimal, they are important for purposes of making sure Maryland's rules are consistent with those of California, in compliance with the requirements for adoption of California standards by other states, pursuant to section 177 of the CAA. These changes serve primarily to achieve consistency between Maryland's and California's rules, for purposes of maintaining parity of Maryland's rules with those of California.

c. Maryland's June 2011 SIP Revision

Maryland again submitted a SIP revision submittal on June 22, 2011 to

submit updates made by the state to its LEV Program rule. Specifically, this SIP revision includes changes made by Maryland to regulation .02 Incorporation by Reference under COMAR 26.11.34. This regulatory revision was adopted by Maryland on April 14, 2011 and became effective in Maryland on May 16, 2011. The purpose of the SIP revision including this rule revision was to update Maryland's incorporation by reference to be consistent with changes made by California to its LEV rules. Since the time that Maryland initially adopted California's rules in 2007, California had updated its rules to: improve on-board diagnostic and emission standards for testing vehicles; adopt standards for testing plug-in hybrid electric vehicle conversions; and to adopt the national GHG emissions standards framework agreement between the EPA, NHTSA, and CARB. Although the changes made by California (and the resulting changes made by Maryland to its incorporation of California's rules by reference) are minimal, they are important for purposes of making sure Maryland's rules are consistent with those of California, in compliance with the requirements for adoption of California standards by other states, per section 177 of the CAA. These changes serve primarily to achieve consistency between Maryland's and California's rules, for purposes of maintaining parity of Maryland's rules with those of California.

II. Proposed Action

EPA is proposing to approve three Maryland SIP revisions submitted to EPA adopting the Maryland Clean Car Program. Maryland adopted California's LEV and ZEV programs, in addition to California's GHG emissions standards for light-duty passenger vehicles and trucks and medium-duty vehicles. Maryland initially submitted the first of these three SIP revisions on December 20, 2007. Maryland subsequently submitted the second of these three SIP revisions to EPA on November 12, 2010, to amend its 2007 SIP revision. Maryland then submitted a SIP revision on June 22, 2011, to amend its earlier SIP revisions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve Maryland's Clean Car Program does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 08, 2012.

W.C. Early,

Acting Administrator, Region III.

[FR Doc. 2012–20787 Filed 8–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–1078; FRL–9717–7]

Revision to the South Coast Portion of the California State Implementation Plan, CPV Sentinel Energy Project AB 1318 Tracking System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is supplementing our prior proposal to approve a source-specific State Implementation Plan (SIP) revision and requesting public comment on additional information we are adding to our docket to revise the South Coast Air Quality Management District (District or SCAQMD) portion of the California SIP. This source-specific SIP revision is known as the CPV Sentinel Energy Project AB 1318 Tracking System (''AB 1318 Tracking System''). We are supplementing our proposed approval of this SIP revision to provide additional information and request comment on three issues: (1) the District's quantification of the offsets it transferred to the AB 1318 Tracking System; (2) the District's surplus adjustment of the offsets in the AB 1318 Tracking System; and (3) which District Air Quality Management Plan (AQMP) is appropriate for determining the base year to evaluate the availability of offsets from shutdown sources.

DATES: Comments on this Supplemental Notice of Proposed Rulemaking (NPRM) must be submitted no later than September 24, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–1078, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: r9airpermits@epa.gov.*
3. *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments that EPA receives within the public comment period will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information where disclosure of the information is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material or voluminous background documents), and some may not be publicly available in either location (e.g., CBI). To inspect the docket, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3524, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', and ''our'' refer to EPA.

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III. Statutory and Executive Order Reviews

I. Background

A. Facility Description and Background

For a detailed discussion of this topic, please refer to our proposed rule at 76 FR 2294 (Jan. 13, 2011). In summary, the Sentinel Energy Project is designed to be a nominally rated 850 Megawatt electrical generating facility covering approximately 37 acres within Riverside County, adjacent to Desert Hot Springs, California in the Palm Springs area. The District determined that the Sentinel Energy Project requires 118,120 pounds (''lbs'') of PM_{10} offsets and 13,928 lbs of SO_X offsets for the District to issue a permit for construction and operation.

B. Procedural History of Source Specific SIP Revision

The District adopted the AB 1318 Tracking System on July 9, 2010. The California Air Resources Board (CARB) submitted the AB 1318 Tracking System to EPA as a source specific SIP revision on September 10, 2010. EPA issued a completeness letter on October 27, 2010, finding that the submittal met the completeness criteria in 40 CFR part 51 Appendix V. EPA proposed approval of the source specific SIP revision on January 13, 2011. 76 FR at 2294. On April 20, 2011, EPA responded to comments and finalized approval of the source specific SIP revision. 76 FR 22038.

California Communities Against Toxics (CCAT) and Communities for a Better Environment (CBE) filed a petition for review with the United States Court of Appeals for the Ninth Circuit. On July 26, 2011, CCAT and CBE filed their Opening Brief. In the Brief, CCAT and CBE alleged that EPA committed a procedural error by failing to post all of the back-up documentation for the offset transactions on EPA's eDocket Web site. EPA was not and is not obligated to post all of these voluminous documents to the eDocket Web site. Copies of those documents were available for inspection in EPA's offices. In addition, those documents had been provided directly to the Petitioners several months earlier. Id.

CCAT and CBE's Opening Brief set forth some detailed assertions regarding the quantification and surplus adjustments of the offset transactions in the AB 1318 Tracking System. The detailed arguments that CCAT and CBE included in their Ninth Circuit Opening Brief were not included in their comments on our proposed rulemaking.

On September 13, 2011, EPA requested that the Court remand the rulemaking to EPA to supplement the record and provide additional justification for our action. The Ninth Circuit summarily denied this motion. Several months later after briefing and oral argument, the Court remanded the rulemaking to EPA for additional justification. The Court did not vacate the rule upon remand.

This Supplemental proposal on remand is seeking comment on three specific issues: (1) The District's quantification of some of the offsets in the AB 1318 Tracking System; (2) the District's surplus adjustment of certain offsets; and (3) which District Air Quality Management Plan is appropriate for determining the base year to evaluate the availability of offsets from sources that shutdown. These three issues are discussed in more detail below.

C. Offsets in This Source-Specific SIP Revision

When equipment or an entire facility is shutdown, it no longer emits air pollutants. The CAA allows the emission reductions from shutdown equipment or facilities to be used to offset the operation of new or modified stationary sources provided the offsets meet the requirements of CAA Section 173. See 40 U.S.C. 7503(a)(1)(A). Section 173 requires offsets to be permanent, enforceable, quantifiable, and surplus. Id. 7503(c). This Supplemental proposal provides additional information regarding EPA's prior determination that at least 118,120 lbs of PM_{10} and 13,928 lbs of SO_X offsets meet the requirements of Section 173 as transferred by the District into the AB 1318 Tracking System. Because the briefs that CCAT and CBE filed with the Ninth Circuit pointed to potential deficiencies with a small number of offsets in the AB 1318 Tracking System, EPA is providing additional information in this Supplemental proposal to identify the specific offsets that we are determining meet all federal requirements.

Attachment A to the Technical Support Document (TSD) for this Supplemental proposal includes two spreadsheets, one for PM_{10} emissions and one for SO_X emissions. These spreadsheets list each source that has shut down and is no longer operating resulting in offsets that the District transferred into the AB 1318 Tracking System.

The offsets listed in Attachment A meet CAA Section 173's requirements to be permanent and enforceable because the owner or operator surrendered the permits to the District. It is illegal under SCAQMD Rule 203 for any source to emit any amount of an air pollutant without a valid permit, unless the source is specifically exempted from this requirement under District Rule 219

(Equipment Not Requiring a Written Permit Pursuant to Regulation II). The Federal government or local air agency may bring an enforcement action against a source operating without a permit. Citizens may also bring such actions because Rule 203 is included in the SIP. For these reasons, when a source shuts down and surrenders its permit to the District, its emissions reductions are permanent and enforceable. The source would be required to apply for a new permit, and provide new offsets, in order to operate again.

The offsets listed in Attachment A are also quantifiable as required by Section 173. Each spreadsheet contains two sections, Section I and II, each with two parts (Parts A and B). For all of the sources listed in Section I, two years of actual emission data was used to calculate an annual average. Section I.A. lists those sources where District Annual Emissions Report (AER) data were used, and Section I.B. lists sources where AER, Acid Rain or Emission Reduction Credit (ERC) application data were used. Section II lists the sources where only one year of AER data was reported. Section II.A. lists those sources where only Year 2 data was reported and Section II.B. lists those sources where only Year 1 data was reported. Quantification of the offsets for which only one year of data is available is discussed in more detail below in Section II.D.1.

The offsets listed in Attachment A are surplus in addition to being quantifiable, permanent and enforceable. Our detailed discussion in Section II.D.2. below provides our justification for finding that each pound of offsets listed in Attachment A is surplus to the requirements of the CAA.

In summary, the Sentinel Energy Project needed 118,120 lbs of PM_{10} offsets and 13,928 lbs of SO_X offsets. The District transferred more than these amounts into the AB 1318 Tracking System for the exclusive use of Sentinel Energy Project. EPA has determined that each of the offsets listed in Attachment A meets all of the creditability requirements of Section 173 of the CAA. The sum of the offsets in Attachment A is 124,797 lbs of PM_{10} and 25,178 lbs of SO_X, which exceeds the amount needed by Sentinel. For any offset transactions the District included in the AB 1318 Tracking System that are not specifically listed in Attachment A, EPA is not taking a position at this time on whether those offsets meet the federal creditability requirements. Those offsets are not necessary for the Sentinel Energy Project to comply with Section 173(a)(1) even though the District transferred them to the AB 1318 Tracking System.

D. Appropriate AQMP for Determining the Base-Year

CCAT and CBE raised a third objection to our approval of the source-specific SIP revision. CCAT and CBE claim the District is prohibited from using any emission reductions from facilities that shutdown equipment prior to the last day of 2002. 2002 is the base-year in the 2007 Air Quality Management Plan (AQMP) that the District adopted to demonstrate attainment with the federal $PM_{2.5}$ and 8-hour Ozone National Ambient Air Quality Standards (NAAQS).

40 CFR 51.165(a)(3)(ii)(C)(*1*)(*ii*) provides that emissions reductions from shutting down equipment may be used as offsets if ''[t]he shutdown or curtailment occurred after the last day of the base year for the SIP planning process.'' The regulation also allows pre-base year emissions reductions from shutdown equipment to be used ''if the projected emission inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.'' Id. Based on this regulation, CCAT and CBE contend the District may not include emission reductions from facilities shutting down equipment prior to the last day of 2002 in the AB 1318 Tracking System. In our prior rulemaking, EPA responded to this comment by stating that the District had added the offsets into the attainment demonstration in the 2007 AQMP for the $PM_{2.5}$ and 8-hour Ozone NAAQS.

This Supplemental proposal changes our reasoning on this issue. EPA has evaluated this issue further and determined that the District's 2003 AQMPs for PM_{10} for the South Coast and the Coachella Valley Basins establish the correct base year. The base year in these AQMPs is 1997. All of the emission reductions in the AB 1318 Tracking System occurred after 1997, and therefore comply with 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*ii*). This issue is discussed in more detail in Section II.D.3. below.

II. Evaluation of Source Specific SIP Revision

A. What is in the SIP revision?

For a detailed discussion of the SIP revision package, please see our proposed approval from January 13, 2011. 76 FR 2294.

The text of the proposed source-specific SIP revision, in relevant part, is:

> The Executive Officer of the South Coast Air Quality Management District shall transfer sulfur oxides and particulate emission credits from the CPV Sentinel Energy Project AB 1318 Tracking System, attached hereto and incorporated by reference herein, to eligible electrical generating facilities pursuant to Health and Safety Code section 40440.14, as in effect January 1, 2010, (i.e. the Sentinel Energy Project to be located in Desert Hot Springs, CA) in the full amounts needed to issue permits to construct and to meet requirements for sulfur oxides and particulate matter emissions. Notwithstanding District Rule 1303, this SIP revision provides a federally enforceable mechanism for transferring offsets from the AQMD's internal accounts to the Sentinel Energy Project.

This SIP revision is intended to provide a federally approved and enforceable mechanism for the District to transfer PM_{10} and SO_X offsets from the District's internal bank to the Sentinel Energy Project and to account for the transferred offsets through the AB 1318 Tracking System.

The District's SIP revision incorporates by reference each of the offsets from the facilities that shutdown equipment. Based on EPA's analysis, however, EPA is only proposing to approve that the PM_{10} and SO_X offsets listed in Attachment A of our TSD meet the federal criteria for purposes of this source-specific SIP revision. This proposal is not taking any action on offsets that are not listed in Attachment A.

B. What are the Federal Clean Air Act requirements?

For a detailed discussion of these requirements, please refer to our proposed approval. 76 FR 2294.

This Supplemental proposal focuses on three requirements. First, the offsets that the District transferred to the AB 1318 Tracking System must be quantifiable. Second, the offsets must be surplus. As discussed in more detail in Section II.D. the offsets in Attachment A meet those requirements. Third, offsets resulting from shutting down emissions units must occur after the base year for the applicable SIP attainment demonstration or otherwise be explicitly included in the SIP's attainment demonstration. The offsets transferred into the AB 1318 Tracking System meet this requirement with respect to the 2003 AQMPs for PM_{10} and precursors for the South Coast and Coachella Air Basins.

C. What actions has EPA taken previously?

Prior to our January 13, 2011 proposal to approve this SIP revision, EPA reviewed the District's Offset Verification Forms and attachments

provided for each source's offsets that the District had transferred to the AB 1318 Tracking System. Our review determined that a sufficient amount of the offsets met the requirements to offset the PM_{10} and SO_X emissions increases from the operation of the Sentinel Energy Project. Specifically, the Project required 118,120 lbs of PM_{10} and 13,928 lb of SO_X offsets. The District had transferred a total of 137,799 lbs of PM_{10} and 25,346 lbs of SO_X offsets into the AB 1318 Tracking System.

EPA has re-evaluated the creditability of some of the offsets in AB 1318 Tracking System. We are now listing the offsets we have determined are creditable in Attachment A. For each source of offsets listed in Attachment A, the District provided documentation demonstrating those offsets meet the Section 173 requirements. Attachment A contains a total of 124,797 lbs of PM_{10} and 25,178 lbs of SO_X, thereby exceeding the amount required for the Project.

Our prior rulemaking did not specifically identify the offsets that we found met the Section 173 requirements. This Supplemental proposal now specifically identifies the offsets that we have determined meet the requirements of Section 173 and lists those offsets in Attachment A. EPA is not taking any action on, and has not reached any conclusion regarding the creditability of, any offsets the District transferred into the AB 1318 Tracking System that are not listed in Attachment A.

D. How is EPA supplementing its prior proposal now?

This Supplemental proposal provides additional details concerning EPA's determination that at least 118,120 lbs of PM_{10} and 13,928 lbs of SO_X offsets transferred into the AB 1318 Tracking System meet the offset integrity requirements of Section 173. See Attachment A to the TSD.

1. The District Has Demonstrated That at Least 118,120 lbs of PM_{10} and 13,928 lbs of SO_X Offsets Are Properly Quantified

To determine if the offsets listed in Attachment A were properly quantified, we reviewed the District's Offset Verification Forms and additional documents. From these documents, we have listed the following information in Attachment A: The type of equipment shutdown, the year the equipment was shutdown, the year 1 (i.e. the year immediately preceding the shutdown) and year 2 (i.e. the second year prior to shutdown) data of pre-shutdown actual emissions, the annual average of both years of pre-shutdown actual emissions (if available), the amount of emissions reductions calculated by the District, the amount calculated for this Supplemental proposal and the source of the emissions data.

The offsets listed in Section I.A. of Attachment A rely on two years of emissions data reported by the source in its AER. The offsets listed in Section I.B. rely on two years of emissions data reported to EPA's Acid Rain database (either solely or in addition to an AER), or in one case, in an application for an ERC.[1] These sources of emissions data are reliable and inherently discourage inaccurate reporting. The permittee must pay substantial fees to the District based on the quantity of emissions reported in the AER, thereby discouraging over-reporting. The Acid Rain database collects data directly from Continuous Emission Monitors or throughput combined with a well established emissions factor. Finally, the emission data used to evaluate the Emission Reduction Credit application was based on actual operating data and reported emissions.

The offsets from sources listed in Section II rely upon one year of emissions data. Section 173 of the CAA does not define how to calculate actual emissions for purposes of providing offsets. EPA's regulations setting forth SIP requirements for offsets are also silent on this issue. See 40 CFR 51.165(a)(3)(i)(C). EPA's Emissions Offset Interpretative Ruling at 40 CFR Part 51, Appendix S, however, provides guidance for calculating the ''baseline for determining credit for emission and air quality offsets''. Appendix S provides:

> When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets should be calculated using the actual annual operating hours for the previous *one or two year period* (or other appropriate period if warranted by cyclical business conditions).

Id. at IV.C. (emphasis added). Therefore, Appendix S contemplates situations in which one year of emissions data is sufficient.

CCAT and CBE have asserted that the District must use two years of actual emissions to calculate the actual emissions for offsets. This assertion relies on the definition of ''actual emissions'' in 40 CFR 51.165(a)(1)(xii). This definition of ''actual emissions'' is not provided for determining offset credit.

We do not need to resolve whether CCAT has relied on the incorrect definition or whether 2 years of emissions data is required for purposes of this proposal. For this proposal, the District either used 2 years of data or appropriately adjusted the single year data. Section II.A. lists sources where we had only Year 2 data (i.e. data for the second year prior to shutdown) and Section II.B. lists sources where only Year 1 data (i.e. data for the year immediately preceding shutdown) was available. For the offsets in Section II.A where the source only reported AER data for Year 2, the District assumed that Year 1 emissions data (the year immediately prior to shutdown) was zero, and the Year 2 data was divided by two to calculate an annual average. Therefore, the District's approach for the sources in II.A is very conservative in calculating the lowest possible amount of offsets.

For the sources listed in Section II.B. where the source only reported AER data for Year 1, then the District assumed that Year 2 data was not reported and the Year 1 data determined the quantity of offsets. For this small fraction of the facilities, the baseline emissions were calculated based on the emissions data from the year immediately preceding the shutdown date. For these facilities, because the data from the twelve month period immediately preceding the shutdown was available, there was no possibility that the year one emissions over estimated the actual emissions for the facility prior to shutdown. There was also no information to indicate that the emissions from the year immediately preceding shutdown were not representative. Therefore, the one year of emissions are representative and not over estimated.

Based on the requirement in 40 CFR part 51, Appendix S and 51.165, EPA is proposing to determine that the District appropriately quantified the offsets for those sources with only one year of emissions data and that these emission reductions meet the requirement of CAA section 173 and 40 CFR part 51 Appendix S and 51.165(a)(1)(C) to be quantifiable.

2. Offsets From Aggregate Facilities and Cement Operations Are Surplus

When EPA proposed approval of the SIP revision in January 2011, we received a comment from CBE and CCAT that contended generally that not all of the offsets from aggregate facilities, spray booths and other industrial sources were surplus. In our

[1] For one project, Seagull Sanitation, the source shutdown and applied for ERCs. The District subtracted the amount of offsets required to comply with Best Available Retrofit Technology at the time of shutdown. Then the District subtracted the amount of offsets that the source ''owed'' the District.

response to comments, we stated that all of the emissions reductions were surplus because ''[t]he District has not promulgated any new rules or standards that would apply to these types of sources, and thus no adjustments to the credits were required.'' 76 FR at 22038. After we issued our response to comments and final rule, CBE and CCAT petitioned for judicial review. In briefing to the Court, CBE and CCAT stated for the first time that the District had adopted Rules 1156 and 1157 that require reductions of emissions at cement plants and aggregate plants. In this Supplemental proposal, EPA is adding information on the surplus adjustment made for the offsets in the AB 1318 Tracking System subject to Rule 1157 (PM_{10} Emission Reductions From Aggregate and Related Operations).

It is important to note that the surplus adjustment of the offsets was not required to be performed until the time the authority to construct permit was issued because EPA requires the surplus adjustment ''at the time of use''. The permit was not issued until after the final approval of our prior SIP action and was not included in the docket. However, now that the permit has been issued, we have re-evaluated the need to surplus adjust the offsets.[2]

Rule 1156 does not apply to any of the offsets included in the AB 1318 Tracking System. Rule 1156 (Further Reduction of Particulate Emissions from Cement Manufacturing Facilities) only applies to cement manufacturers, not users of cement products.[3] Two facilities in the AB 1318 Tracking System, Elsinore Ready-Mix Co., Inc. and Oldcastle Westile, Inc., use cement products but do not manufacture cement. Therefore, Rule 1156 does not apply to those facilities and Rule 1156 does not require any surplus adjustment to the offsets from these facilities or any others in the AB 1318 Tracking System.

Rule 1157, which applies to aggregate facilities, was also adopted after the earliest date equipment was shutdown for any offsets included in the AB 1318 Tracking System (i.e. 1999). Six aggregate facilities are included in the AB 1318 Tracking System. Matthews International Corp. is not subject to Rule 1157 because the rule only applies to aggregate operations which are defined as ''operations that *produce* sand, gravel, crushed stone, and/or quarried rocks.'' Since Matthews is a foundry operation that uses, but does not produce sand, the facility is not subject to Rule 1157.

Rule 1157 applies to the six aggregate facilities in the AB 1318 Tracking System. If any of these facilities were already operating in compliance with the new standards in Rule 1157, then no surplus adjustment was required to ensure the emission reductions were surplus (i.e. went beyond the reductions required by the rule). In other words, the emissions from these facilities were already equal to or less than the emissions allowed by Rule 1157. The rule requires various techniques to be used throughout the facility to minimize PM_{10} emissions. These techniques include housekeeping provisions such as cleaning spills on paved roads; control techniques such as the application of water or dust suppressants, enclosures and baghouses; and equipment and work standards to minimize track out of materials. The District establishes emission factors based on the use of these techniques as part of the rulemaking process for adopting Rule 1157. If the facility's total emissions are below the material throughput multiplied by the applicable emissions factors, the facility is in compliance with Rule 1157. In this case, no further surplus adjustment is required unless the rule is amended to further reduce the allowable emissions before the offsets are used. While Rule 1157 has not been amended, the District has adopted revised emission factors for the various operations subject to this rule,[4] and therefore, further adjustments were made to the offsets from these six aggregate facilities. These further adjustments are discussed in more detail in the TSD and shown in Attachment A.

3. The District Properly Transferred Offsetting Emission Reductions From Sources that Shutdown in 1999–2002

The final issue for comment in this Supplemental proposal concerns the appropriate SIP AQMP for the District and EPA to use to evaluate whether the emissions reductions from shutdown units have been included in the SIP's base year.

40 CFR part 51, Appendix S,[5] at IV.3, provides: Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs IV.C.3.i.*1* through *2* of this section.

Section IV.C.3.i.*1* requires the emissions reductions to be surplus, permanent, quantifiable and federally enforceable. Section IV.C.3.i.*2* allows emission reductions from shutdown equipment or curtailed operations to be used provided:

> The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions units.

In our final rulemaking, EPA responded to comments on this issue by indicating our understanding that the District properly added pre-base year credits into its 2007 $PM_{2.5}$ AQMP which we concluded met the requirements of the second sentence of the IV.3.C.i.*2*.

EPA has now determined that it would be more appropriate to rely on the District's 2003 PM_{10} AQMPs, rather than their 2007 $PM_{2.5}$ AQMP for two reasons. The reason for relying on the 2003 AQMPs is that the offsets the District transferred to the AB 1318 Tracking System are for PM_{10}, not $PM_{2.5}$. The District has approved PM_{10} AQMPs for both the South Coast Air Basin and the Coachella Valley that were adopted in 2003. Therefore, the appropriate AQMP for EPA to reference when evaluating PM_{10} offsets (and precursors including SO_X) for the AB 1318 Tracking System is the approved 2003 PM_{10} AQMPs. The inventories in the 2003 PM_{10} AQMPs have a base year of 1997 for both the South Coast Air Basin and the Coachella Valley.[6] None of the offsets transferred by the District were derived from shutdowns occurring before the last day of 1997. Therefore all of the offsets in the AB 1318 Tracking System resulting from shutdown equipment were included in the base year for the 2003 PM_{10} AQMPs, including SO_X as a precursor.[7]

[2] We considered the surplus adjustment at the time of our prior approval, however, the District made some final surplus adjustments before issuing the permit. This later adjustment does not change our prior determination that the available offsets in the AB 1318 Tracking System were more than required for the Sentinel Energy Project.

[3] As stated in the District's Staff Report for Rule 1156, the two facilities affected by Rule 1156 are TXI Riverside Cement and Cal Portland Cement.

[4] See letter from Barry R. Wallerstein to Malcolm C. Weiss, Subject: Rule 1157—PM_{10} Emission Reductions from Aggregate and Related Operations, dated December 15, 2006.

[5] Appendix S has the same language that is used in 40 CFR 51.165.

[6] EPA also notes that we had not approved the 2007 $PM_{2.5}$ AQMPs at the time the District transferred the offsets to the AB 1318 Tracking System. EPA proposed approval of the 2007 $PM_{2.5}$ AQMP in July 2011 and finalized approval on November 9, 2011.

[7] Although we are now relying on the 2003 PM_{10} AQMPs, EPA has not changed our determination that the District explicitly added offsets into the inventories for the 2007 AQMP as discussed in EPA's and the District's briefing to the Ninth Circuit.

EPA is now proposing to approve the AB 1318 Tracking System because all of the offsets for PM_{10} and the precursor SO_X occurred after the base year of 1997 in the PM_{10} AQMPs.

E. Section 110(l) Evaluation

Under section 110(l) of the CAA, EPA may not approve any SIP revision that would interfere with attainment, reasonable further progress (RFP) or any other CAA requirement.

We have determined that this SIP revision will not interfere with attainment or RFP because the offsets in the AB 1318 Tracking System are not relied on for attainment or RFP in the District's attainment demonstrations. We are also not aware of this revision interfering with any other CAA requirement. For example, this source-specific SIP revision provides a new but equivalent mechanism to provisions in Regulation XIII for satisfying the offset requirements of CAA Section 173 because the offsets the District is transferring from its internal bank to the AB 1318 Tracking System meet all federal requirements. In addition, the District supplied a copy of its air quality analysis for the Sentinel Energy Project that shows that operation of the facility will not interfere with the ability of the District to reach attainment.

F. Public Comment and Final Action

Because EPA believes the submittal fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action, addressing all public comments, which will incorporate this submittal into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 9, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–20777 Filed 8–22–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 164

Thursday, August 23, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Northwest Forest Plan Provincial Advisory Committees

AGENCY: Forest Service, USDA.

ACTION: Notice; Solicitation of nominees to the Northwest Forest Plan Provincial Advisory Committees.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. app., the United States Department of Agriculture (USDA) announces solicitation for nominations to fill vacancies on the Northwest Forest Plan Provincial Advisory Committees (the Eastern Washington Cascades and the Deschutes PACs).

DATES: Nominations must be received on or before September 24, 2012. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed Form AD–755, Advisory Committee or Research and Promotion Background Information. The package must be sent to the addresses below.

ADDRESSES: Forest Contacts for Northwest Forest Plan Provincial Advisory Committees (PACs):

Eastern Washington Provincial Advisory Committee: Robin DeMario, Okanogan-Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA 98801. Telephone Number: (509) 664–9292.

Deschutes Provincial Advisory Committee: Mollie Chaudet, Deschutes National Forest Headquarters Office, 63095 Deschutes Market Road, Bend, OR 97701. Telephone Number: (541) 383–5517.

FOR FURTHER INFORMATION CONTACT: Shandra Terry, Public Affairs Specialist: USDA Forest Service, Office of Public and Legislative Affairs, Telephone: (503) 808–2242, Email: *sterry@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture established the Pacific Northwest Provincial Advisory Committees (PACs) to the Provincial Interagency Executive Committees (PIECs) for 12 provinces, which are areas set up under the Northwest Forest Plan. The PIECs facilitate the successful implementation of the Record of Decision (ROD) of April 13, 1994, for Amendments to the Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl. The purpose of the PACs is to advise the PIECs on coordinating the implementation of the ROD. Each PAC provides advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province. The PACs provide advice and recommendations to promote better integration of forest management activities between Federal and non-Federal entities to ensure that such activities are complementary.

Provincial Advisory Committee Membership

The Committee will be comprised of no more than 29 members approved by the Secretary of Agriculture. Committee membership will be fairly balanced in terms of the points of view represented and functions to be performed. The PAC members will serve staggered terms up to 3 years.

The Committee Shall Include Representation in the Following Areas

1. One or more representatives of the Environmental Protection Agency;
2. One or more representatives of the U. S. Fish and Wildlife Service;
3. One or more representatives of the Forest Service;
4. One or more representatives of the BLM in each province where lands administered by BLM occur in the province;
5. One or more representatives of the National Park Service in each province where a national park occurs in the province;
6. One or more representatives of the National Marine Fisheries Service;
7. One or more representatives of the Bureau of Indian Affairs;
8. Up to a maximum of three representatives of the government of each State within whose boundaries all or a portion of the province is located (the State agencies/departments to be represented will be determined by the Federal officials described in Paragraphs 3a(1) through 3a(7));
9. One or more representatives of each county government within whose boundaries all or a portion of the province is located, up to a maximum of three county representatives;
10. One or more representatives of each Tribal government whose reservation, ceded land, or usual and accustomed areas are within all or a portion of the province, up to a maximum of three Tribal representatives;
11. Up to a maximum of two representatives of environmental interests;
12. Up to a maximum of two representatives of different sectors of the forest products industry;
13. Up to a maximum of two representatives of the recreation and tourism sectors;
14. Three to five representatives of the following interests when those interests are determined by the Federal officials described in Paragraphs 3a(1) through 3a(7) to be needed on the respective provincial committee: Fish, wildlife, or forestry conservation organizations; special forest products interests, mining interests, grazing interests, and commercial fishing or charter fishing boat industry interests; and other interests that help achieve the purpose of this charter;
15. Up to a total of three representatives from the following Federal agencies when the jurisdiction or authority of those agencies are determined by the Federal officials described in Paragraphs 3a(1)(a) through 3a(1)(g) to be needed on the respective provincial committee: Bureau of Reclamation, Forest Service Research, U. S. Army Corps of Engineers, U. S. Geological Survey National Biological Division, Bonneville Power Administration, Department of Defense, and Natural Resources Conservation Service; and
16. Up to a maximum of three representatives representing the public at large affected by the ROD for the Northwest Forest Plan and concerned with the management of the national forests in the community.

The PACs may invite a representative of the State Community Economic

Revitalization Team, or its equivalent, to participate as an ex-officio member. In the event a member is unable to attend a meeting of a PAC or a meeting of one of its subcommittees/working groups, that member may send a designee, or alternate, to represent him or her at the meeting. The Chairperson of each PAC will alternate annually between the Forest Service representative and the BLM representative in provinces where both agencies administer lands. When the BLM is not represented on the PIEC, the Forest Service representative will serve as Chairperson.

Nominations and Application Information for the PACs

The appointment of members to the PACs will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified persons to represent the vacancies listed above. To be considered for membership, nominees must—

1. Identify what vacancy they would represent and how they are qualified to represent that vacancy;

2. State why they want to serve on the committee and what they can contribute;

3. Show their past experience in working successfully as part of a working group on forest management activities;

4. Complete Form AD–755, you may contact the persons identified above or obtain from the following Web site: *http://www.usda.gov/documents/OCIO_AD_755_Master_2012.pdf.* All nominations will be vetted, by the Agency.

Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the PACs. To ensure that the recommendations of the PACs have taken into account the needs of the diverse groups served by the Departments, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: August 10, 2012.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2012–20702 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0066]

Notice of Request for a Revision to and Extension of Approval of an Information Collection; Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the bovine tuberculosis regulations.

DATES: We will consider all comments that we receive on or before October 22, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0066-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0066, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0066* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the domestic tuberculosis program, contact Dr. Charles W. Hench, Senior Staff Veterinarian, Tuberculosis Eradication Program, APHIS, 2150 Centre Avenue, Fort Collins, CO 80526; (970) 494–7378. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Number: 0579–0146.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests and for conducting programs to detect, control, and eradicate pests and diseases of livestock. In connection with this mission, APHIS participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis from the United States. This program is conducted under various States' authorities supplemented by Federal authorities regulating interstate movement of affected animals.

The tuberculosis regulations contained in 9 CFR part 77 provide several levels of tuberculosis risk classifications to be applied to States and zones within States, and classify States and zones according to their tuberculosis risk. The regulations restrict the interstate movement of cattle, bison, and captive cervids from the various classes of States or zones to prevent the spread of tuberculosis.

These regulations contain information collection activities, including requirements for epidemiological reviews, certificates for animals moved interstate, tuberculosis management plans, submission by States of requests to APHIS for State or zone status, and submission by States of an annual report to APHIS for renewal of State or zone status.

The total burden hours increased due to program changes and adjustments. For example, the certificate of tuberculosis test was separated into two separate burden items and their combined burden was, therefore, increased. The States are also providing more detailed information with the memorandum of understanding resulting in an increased burden. In addition, nine new forms have been added to the collection, including recordkeeping for approved feedlots.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our

information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.4654 hours per response.

Respondents: State animal health officials, producers and owners (including animal and feedlot owners), and accredited veterinarians.

Estimated annual number of respondents: 5,000.

Estimated annual number of responses per respondent: 11.9532.

Estimated annual number of responses: 59,766.

Estimated total annual burden on respondents: 27,818 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of August 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–20737 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0056]

Notice of Request for Extension of Approval of an Information Collection; Importation of Swine Hides, Bird Trophies, and Deer Hides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the importation of swine hides, bird trophies, and deer hides.

DATES: We will consider all comments that we receive on or before October 22, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0056-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0056, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0056* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of swine hides, bird trophies, and deer hides, contact Dr. Tracye Butler, Assistant Director, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3340. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Swine Hides, Bird Trophies, and Deer Hides.

OMB Number: 0579–0307.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 91 through 99, of the Code of Federal Regulations.

The regulations in 9 CFR part 95 (referred to below as the regulations) prohibit or restrict the importation of specified animal products into the United States to prevent the introduction into the U.S. livestock population of certain contagious animal diseases. Section 95.5 of the regulations contains, among other things, specific processing, recordkeeping, and certification requirements for untanned hides and skins and bird trophies.

The regulations require that shipments of hides be accompanied by certificates showing their origin and certifying that the hides are from areas free of certain animal diseases. Shipments of ruminant hides from Mexico must be accompanied by written statements indicating that the hides were frozen for 24 hours and treated for ticks. Shipments of bird trophies must be accompanied by certificates of origin certifying that the trophies are from regions free of exotic Newcastle disease and highly pathogenic avian influenza. These activities help ensure that the products do not harbor disease or ticks.

We have increased the estimated annual burden after reviewing the regulations and current data. When comparing the regulations with the information collection activities, we found that the reporting of certificates for hides and skins from certain regions was omitted from past information collections.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as

appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1997 hours per response.

Respondents: Federal animal health authorities in certain regions and foreign exporters of certain animal byproducts.

Estimated annual number of respondents: 191.

Estimated annual number of responses per respondent: 3.7225.

Estimated annual number of responses: 711.

Estimated total annual burden on respondents: 142 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of August 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–20739 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0062]

Notice of Request for Extension of Approval of an Information Collection; Foreign Quarantine Notices

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the introduction or spread of foreign plant pests into or within the United States.

DATES: We will consider all comments that we receive on or before October 22, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012–0062-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0062, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0062* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on foreign quarantine regulations, contact Mr. Matthew Rhoads, Director, Regulation, Permit, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851–2018. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Foreign Quarantine Notices.

OMB Number: 0579–0049.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict or prohibit the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA. Regulations governing the importation of plants, fruits, vegetables, roots, bulbs, seeds, unmanufactured wood articles, and other plant products are contained in 7 CFR part 319, ''Foreign Quarantine Notices.''

In administering the regulations, APHIS collects information from persons both within and outside the United States who are involved in growing, packing, handling, transporting, and importing articles regulated under part 319.

For example, many plants or plant products may not be imported until the person wishing to import them receives a permit from APHIS. The person wishing to import these items must first fill out a permit application. We consider the permit application process extremely important, since the information on the application enables us to determine whether the items for import represent a potential pest threat to U.S. agriculture.

Under certain circumstances, we also require importers to supply us with other types of information. We require, for example, that containers used to import various plants or plant products be marked in a certain way so that our inspectors can accurately identify them and match them to their accompanying documentation.

We require that certain shipments be accompanied by a phytosanitary inspection certificate, which is a document completed by plant health officials in the originating country that attests to the condition of the shipment with respect to plant pests at the time it was inspected prior to its export to the United States. We use this important information as a guide in determining the intensity of the inspection we must conduct when the shipment arrives in the United States.

This and other information we collect is vital to helping us ensure that imported plants and plant products do not harbor plant pests or noxious weeds that, if introduced into the United States, could cause millions of dollars in damage to U.S. agriculture.

We are asking OMB to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2993 hours per response.

Respondents: U.S. importers of fruits and vegetables; foreign plant protection authorities; individuals involved in growing, packing, handling, transporting, and importing plants and plant products; and beekeepers.

Estimated annual number of respondents: 93,066.

Estimated annual number of responses per respondent: 3.4404.

Estimated annual number of responses: 320,182.

Estimated total annual burden on respondents: 95,818 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of August 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–20738 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Arizona Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Arizona Resource Advisory Committee will meet in Tucson, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 18, 2012, at 10:00 a.m.

ADDRESSES: The meeting will be held at the Tucson Interagency Fire Center, 2646 E. Commerce Center Place, Tucson, AZ 85706. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Coronado National Forest Supervisor's Office, 300 West Congress Street, Tucson, AZ 85701. Please call ahead to 520–388–8458 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Sarah Davis, Coronado National Forest Supervisor's Office, 520–388–8458, *sldavis@fs.fed.us*, or Jennifer Ruyle, RAC Coordinator, same location, 520–388–8351, *jruyle@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review, discussion, and recommendation to the Designated Federal Official of the proposals to be funded. Additional information may be obtained from Sarah Davis, contact information listed above. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Sarah Davis, Coronado National Forest Supervisor's Office, 300 West Congress Street, Tucson, AZ 85701, or by email to *sldavis@fs.fed.us*, or via facsimile to 520–388–8332. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring resonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2012.

Cornelia D. Lane,

Acting Forest Supervisor, Coronado National Forest.

[FR Doc. 2012–20733 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ozark-Ouachita Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ozark-Ouachita Rescource Advisory Committee will meet in Waldron, Arkansas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 25, 2012, beginning at 4:30 p.m. CST. Alternate meeting dates are September 26, 27, and 28 in case of postponement due to weather, lack of committee quorum, or other unforeseen circumstances. Please call 501–321–5202 prior to September 25th to determine postponment or rescheduling.

ADDRESSES: The meeting will be held at the Scott County Courthouse, 100 W. First Street, Waldron, AR 71958. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ouachita National Forest Supervisor's Office. Please call ahead to 501–321–5202 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318). Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and recommend projects authorized under title II of the Act.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 18, 2012, to be scheduled on the agenda. Send written comments and requests to Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902, or by email to *carolinemitchell@fs.fed.us,* or via facsimile to 501–321–5399. A summary of the meeting will be posted at *https://fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation, please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 16, 2012.

Bill Pell,

Designated Federal Official.

[FR Doc. 2012–20796 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ontonagon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ontonagon Resource Advisory Committee will meet in Ontonagon, Michigan. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and make recommendations on Title II Projects submitted by the public.

DATES: The meeting will be held on September 13, 2012, and will begin at 9:30 a.m. (EST).

ADDRESSES: The meeting will be held at the Ewen-Trout Creek School, 14312 Airport Road, Ewen, Michigan. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ottawa National Forest, E6248 US Hwy. 2, Ironwood, MI 49938. Please call ahead to 906–932–1330 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, RAC coordinator, USDA, Ottawa National Forest, E6248 US Hwy. 2, Ironwood, MI, (906) 932–1330, ext. 328; email *lklaus@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and approval of previous meeting minutes. (2) Review and make recommendations for Title II Projects submitted by the public. (3) Public comment. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 7, 2012, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Lisa Klaus, Ottawa National Forest, E6248 US Hwy. 2, Ironwood, MI 49938. Comments may also be sent via email to *lklaus@fs.fed.us* or via facsimile to 906–932–0122.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2012.

Lisa Klaus,

Acting Forest Supervisor.

[FR Doc. 2012–20725 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

GMUG Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The GMUG Resource Advisory Committee will meet in Delta, Colorado. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to gather the appointed committee members together to review and recommend projects for Title II funding within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

DATES: The meeting will be held Wednesday, September 19, 2012, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office at 2250 Highway 50, Delta, Colorado in the North Spruce Conference Room. Written comments should be sent to Attn: GMUG RAC, 2250 Highway 50, Delta, CO 81416. Comments may also be sent via email to *lloupe@fs.fed.us* or via facsimile to Attn: Lee Ann Loupe, RAC Coordinator at 970–874–6698.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *www.fido.gov/facadatabase* under GMUG RAC information. Please call ahead to 970–874–6717 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lee Ann Loupe, RAC Coordinator, Grand Mesa, Uncompahgre & Gunnison National Forests, 970–874–6717 (phone), 970–874–6660 (TTY), *lloupe@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other

reasonable accomodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The appointed Committee members will be updated on current projects that were recommended and approved by the RAC; review and discuss the projects that were submitted to the Committee by August 31; and make recommendations for funding/approval of those projects to utilize Title II funds within the appropriate counties. Full agenda can be previewed at: *www.fido.gov/facadatabase*. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 5, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 2250 Highway 50, Delta, CO 81416 or by email to *lloupe@fs.fed.us* or via facsimile to Attn: Lee Ann Loupe 970–874–6698. A summary of the meeting will be posted at Federal Advisory Committee Web site at: *www.fido.gov/facadatabase* within 21 days of the meeting. If you require sign language interpreting, assistive listening devices or other reasonable accommodations for access to the meeting please request this in advance by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2012.

Sherry Hazelhurst,

Deputy Forest Supervisor/GMUG RAC DFO.

[FR Doc. 2012–20730 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule will meet in Washington, DC. The committee operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and recommendations on the implementation of the National Forest System Land Management Rule. The meeting is open to the public. The purpose of the meeting is to perform administrative tasks such as ethics training, Federal Advisory Committee Act training, and establishing committee operating procedures. Another objective of the meeting is to define areas where the committee can provide the most valuable input and recommendations for implementation of the new planning rule.

DATES: The meeting will be held on September 11–13, 2012, from 9:00 a.m. to 5:00 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the Courtyard Washington located at 1325 2nd Street NE., Washington, DC.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th Street SW., Washington, DC, 3rd Floor Central. Please call ahead to 202–205–0895 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Helwig, Ecosystem Management Coordination, 202–205–0892, *jahelwig@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Determine the scope and initial tasks of the committee, (2) ethics training, and (3) administrative tasks. Further information, including the meeting agenda, will be posted on the Planning Rule Advisory Committee Web site at *http://www.fs.usda.gov/main/planningrule/committee.*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104. Comments may also be sent via email to Jennifer *Helwig at jahelwig@fs.fed.us,* or via facsimile to 202–205–1012. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/planningrule/committee* within 21 days of the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation, please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 15, 2012.

James W. Peña,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–20701 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gogebic Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gogebic Resource Advisory Committee will meet in Watersmeet, Michigan. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and make recommendations on Title II Projects submitted by the public.

DATES: The meeting will be held on September 14, 2012, and will begin at 9:30 a.m. (CST).

ADDRESSES: The meeting will be held at the Watersmeet/Iron River Ranger District Office, Corner of U.S. 2/Hwy 45, Watersmeet, Michigan. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938. Please call ahead

to 906–932–1330 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, RAC coordinator, USDA, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI, (906) 932–1330, ext. 328; email *lklaus@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and approval of previous meeting minutes. (2) Review and make recommendations for Title II Projects submitted by the public. (3) Public comment. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 7, 2012, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Lisa Klaus, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938. Comments may also be sent via email to *lklaus@fs.fed.us* or via facsimile to 906–932–0122.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2012.

Lisa Klaus,

Acting Forest Supervisor.

[FR Doc. 2012–20726 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Procedures for Considering Requests and Comments from the Public for Textile and Apparel Safeguard Actions on Imports from Colombia.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission (new information collection).

Burden Hours: 24.

Number of Respondents: 6 (1 for Request; 5 for Comments).

Average Hours per Response: 4 hours for a Request; and 4 hours for each Comment.

Average Annual Cost to Public: $960.

Needs and Uses: Title III, Subtitle B, Section 321 through Section 328 of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Public Law 112–42] implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a Colombian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Colombia to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8818 (77 FR 29519, May 18, 2012), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Colombia, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to section 322(b) of the Act.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–7285 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: August 17, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20715 Filed 8–22–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Program Administration.

OMB Control Number: 0648–0119.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 34.

Average Hours per Response: Performance management tracking, 27 hours; performance reports range from 1 to 34 hours, depending on the program; Section 306a application checklist and documentation, 5 hours; amendments and program change documentation, 16 hours; Section 309 Strategy and Assessment documentation, 240 hours;

Coastal Nonpoint Pollution Program documentation, 320 hours.

Burden Hours: 9,704.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

In 1972, in response to intense pressure on United States (U.S) coastal resources, and because of the importance of U.S. coastal areas, the U.S. Congress passed the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.* The CZMA authorized a federal program to encourage coastal states and territories to develop comprehensive coastal management programs. The CZMA has been reauthorized on several occasions, most recently with the enactment of the Coastal Zone Protection Act of 1996. (CZMA as amended). The program is administered by the Secretary of Commerce, who in turn has delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) National Ocean Services (NOS).

The coastal zone management grants provide funds to states and territories to implement federally-approved coastal management programs; complete information for the Coastal Zone Management Program (CZMP) Performance Management System; revise assessment document and multi-year strategy; submit documentation as described in the CZMA Section 306a on the approved coastal zone management programs; submit request to approve amendments or program changes; and report on the states' coastal nonpoint source pollution programs (CNPSP).

Revision: There is new competitive grant funding under CZMA Section 309a, so that funding stream and required documentation will now be part of this information collection. For Section 309 Strategy Assessment, reports are due every 5 years now, rather than every 2 years. For Section 310, there is currently no funding.

Affected Public: State, local and tribal government.

Frequency: Annually, semi-annually and on occasion.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 17, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20716 Filed 8–22–12; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee, Request for Nominations

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Solicitation of Nominations for Membership on the Environmental Technologies Trade Advisory Committee (ETTAC).

SUMMARY: The Department of Commerce, International Trade Administration (ITA) is requesting nominations for memberships on the Environmental Technologies Trade Advisory Committee (ETTAC). The ETTAC was established under the Federal Advisory Committee Act, 5 U.S.C. App., and pursuant to Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c). ETTAC was first chartered on May 31, 1994. ETTAC advises the Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC), through the Secretary of Commerce in his capacity as Chairman of the TPCC. ETTAC advises on the development and administration of programs to expand U.S. exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements. The Department of Commerce anticipates rechartering ETTAC for a new two-year term in October 2012, and is seeking nominations for membership on the ETTAC for the new charter term.

DATES: All applications for immediate consideration for appointment must be received on or before midnight EDT on September 21, 2012. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Please send nominations by post, email, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; phone 202–482–4877; email *todd.delelle@trade.gov;* fax 202–482–5665.

FOR FURTHER INFORMATION CONTACT: Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; phone 202–482–4877; email *todd.delelle@trade.gov;* fax 202–482–5665.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce invites nominations to ETTAC for appointments for a two-year term beginning in the fall of 2012. The ETTAC was most recently rechartered on October 25, 2010, and the ETTAC's new charter term is anticipated to begin in fall 2012. Members will be selected in accordance with applicable Department of Commerce Guidelines based upon their ability to advise the Secretary of Commerce on the development and administration of programs to expand U.S. exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements, as articulated in ETTAC's Charter, which is available on the Internet at *http://www.environment.ita.doc.gov* under the tab: Advisory Committee. The ETTAC shall advise on matters including: trade policy development and negotiations relating to U.S. environmental technologies exports; the effect of U.S. Government policies, regulations and programs, and foreign government policies' and practices on the export of U.S. environmental products, technologies, and services; the competitiveness of U.S. industry and its ability to compete for environmental technologies, products and services opportunities in international markets; the identification of priority environmental technologies, products and service markets with high immediate returns for U.S. exports; strategies to increase private sector awareness and effective use of U.S. Government export promotion programs; the development of complementary industry and trade association export promotion programs; and the development of U.S. Government programs to encourage producers of environmental

technologies, products and services to enter new foreign markets.

The Secretary of Commerce will appoint up to 35 members to the ETTAC. The members shall be selected in a manner that ensures that the ETTAC is balanced in terms of product and service lines and reflects the diversity of this sector, including in terms of geographic location and company size. Members of the ETTAC shall be drawn from U.S. environmental technologies manufacturing and services companies, U.S. trade associations, and U.S. private sector organizations involved in the promotion of environmental technologies, products, and services. The ETTAC shall include at least one individual representing each of the following:

1. Environmental businesses, including small businesses;
2. Trade associations in the environmental sector;
3. Private sector organizations involved in the promotion of environmental exports, including products that comply with U.S. environmental, safety, and related requirements;
4. States (as defined in 15 U.S.C. 4721(j)(5)) and associations representing the States; and
5. Other appropriate interested members of the public, including labor representatives.

Candidates should be senior executive-level representatives from U.S. environmental technology companies, trade associations, and non-profit organizations. Applicants must have experience in exporting environmental technologies products and services; ITA particularly seeks applicants with experience in one or more of the following sectors:

(1) Air pollution control and monitoring technologies;
(2) Analytic devices and services;
(3) Environmental engineering and consulting services;
(4) Financial services relevant to the environmental sector;
(5) Process and pollution prevention technologies;
(6) Solid and hazardous waste management technologies; and
(7) Water and wastewater treatment technologies.

Members serve in a representative capacity, expressing the views and interests of a U.S. company or organization as well as its particular sector; they are, therefore, not Special Government Employees. For purposes of ETTAC eligibility, a U.S. company is defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is at least 51 percent owned and controlled by U.S. persons. For purposes of ETTAC eligibility, a U.S. organization is defined as an organization established in the United States that is controlled by U.S. persons, as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable.

All members must be U.S. citizens. Federally registered lobbyists are not eligible for appointment, nor are individuals registered as a foreign agent under the Foreign Agents Registration Act.

ETTAC members are not be compensated for their services or reimbursed for their travel expenses. The ETTAC shall, to the extent practicable, meet approximately three times a year. Most ETTAC meetings are held in Washington, DC.

All appointments are made without regard to political affiliation. Members shall serve at the pleasure of the Secretary for a two year term. Self-nominations will be accepted. If you are interested in being nominated to become a member of ETTAC, please provide the following information (2 pages maximum):

(1) Name;
(2) Title;
(3) Work phone, fax, and email address;
(4) A sponsor letter from the applicant on his or her entity's letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the ETTAC. This letter should include the name and address of entity to be represented by the applicant, including Web site address, and address the applicant's experience in exporting environmental technologies products and services;
(5) Short biography of nominee, including information demonstrating knowledge and experience relevant to the work of the ETTAC;
(6) Brief description of the entity to be represented, including, as applicable, its business activities, company size (number of employees and annual sales), and export markets served; and
(7) An affirmative statement that:
(a) The applicant is a U.S. citizen;
(b) The applicant is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as an ETTAC member if the applicant becomes a federally-registered lobbyist;
(c) The applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended;
(d) The applicant meets all ETTAC eligibility requirements, including that the applicant represents a U.S. company or U.S. organization.

Please do not send company or trade association brochures or any other information.

Nominees selected to serve on the ETTAC will be notified.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–20773 Filed 8–22–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC177

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings of the South Atlantic Fishery Management Council.

SUMMARY: The South Atlantic Fishery Management Council will hold meetings of its: Ecosystem-Based Management Committee; Shrimp Committee; Southeast Data, Assessment and Review (SEDAR) Committee; Snapper Grouper Committee; Ad Hoc Data Collection Committee; King and Spanish Mackerel Committee; Advisory Panel Selection Committee (closed session); Golden Crab Committee; Executive Finance Committee; and a meeting of the Full Council. The Council will take action as necessary. The Council will also hold an informal public question and answer session regarding agenda items, and a formal public comment session. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The Council meeting will be held September 10–14, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Charleston Marriott Hotel, 170 Lockwood Boulevard, Charleston, SC 29403; telephone: (1–800) 968–3569 or (843) 723–3000; fax: (843) 723–0276.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Copies of documents are available from Kim Iverson, Public Information Officer (see **FOR FURTHER INFORMATION CONTACT**).

Meeting Dates:

1. *Ecosystem-Based Management Committee Meeting: September 10, 2012, 1:30 p.m. until 3 p.m.*

The Ecosystem-Based Management Committee will review the status for Comprehensive Ecosystem-Based Amendment 3 (CE–BA 3), review the list of items and develop recommendations for CE–BA 4, and will receive an update on ecosystem activities.

2. *Shrimp Committee Meeting: September 10, 2012, 3 p.m. until 4 p.m.*

The Shrimp Committee will receive: an overview of public hearing comments for Shrimp Amendment 9, which would expedite the closure process during severe cold events in order to protect overwintering shrimp populations and would revise the Minimum Stock Size Threshold (MSST) proxy for pink shrimp; and a report from the Scientific and Statistical Committee (SSC). The Committee will develop recommendations for the amendment and is scheduled to recommend approval of Amendment 9 for formal review.

3. *SEDAR Committee Meeting: September 10, 2012, 4 p.m. until 5:30 p.m. (Note: A portion of the meeting will be CLOSED.)*

The SEDAR Committee will receive an activities update as well as a presentation on the SSC Only Reliable Catch Stocks (ORCS) Workshop. The Committee will provide guidance to the SEDAR Steering Committee representatives and will receive an overview of SEDAR 32, pertaining to gray triggerfish and blueline tilefish. The Committee is scheduled to approve the SEDAR schedule and make appointments to SEDAR 32 (closed session).

4. *Snapper Grouper Committee Meeting: September 11, 2012, 8:30 a.m. until 5 p.m.*

The Snapper Grouper Committee will receive updates on Oculina research activities and the status of catches versus quotas for commercial and recreational species under Annual Catch Limits (ACLs). The Committee will also receive a presentation on ''Catch and Discard Characterization for Red Snapper, Warsaw Grouper and Speckled Hind''. The Committee will review the status of amendments currently under formal review, including: The status of the red snapper emergency action request; Regulatory Amendment 12 pertaining to the golden tilefish ACL adjustment; the resubmittal of Action 4 in Amendment 18A addressing the transferability of black sea bass endorsements; Amendment 20A regarding the wreckfish Individual Transferable Quota (ITQ); and Amendment 18B that includes measures to limit participation in the commercial golden tilefish fishery. The Committee will also review an emergency rule request to delay the start of the golden tilefish fishing season. The Committee will discuss the status of the proposed Marine Protected Areas (MPAs) and Habitat Areas of Particular Concern (HAPCs) for speckled hind and warsaw grouper, including an overview of input from the public workshops and an update on SSC discussions. Additionally, the Committee will receive an overview for: Regulatory Amendment 13, regarding adjustments of snapper grouper ACLs based on Marine Recreational Fishing Statistical Survey/Marine Recreational Information Program (MRFSS/MRIP) calibration; Amendment 22, pertaining to the development of the red snapper tag program; and Regulatory Amendment 14, regarding an overview of management history and current regulations for mutton snapper, greater amberjack, gray triggerfish, black sea bass and vermilion snapper. The Committee will discuss the blue runner issue as well as the Council's vision for the future of the snapper grouper fishery. The Committee will provide guidance and recommendations to staff on timing, actions and alternatives.

5. *Ad Hoc Data Collection Committee Meeting: September 12, 2012, 8:30 a.m. until 12 noon.*

The Ad Hoc Data Collection Committee will receive presentations on results of bycatch monitoring and the NMFS quota monitoring system. The Committee will: Review public hearing comments for the Joint Gulf and South Atlantic Council Generic Dealer Permit; finalize Committee recommendations; and recommend approval of the permit for formal review. The Committee will: Review public hearing comments for commercial vessel, for-hire vessel and discard reporting actions in CE–BA 3; finalize Committee recommendations for CE–BA 3; and recommend approval of these items for formal review.

6. *King and Spanish Mackerel Committee Meeting: September 12, 2012, 1:30 p.m. until 5 p.m.*

The King and Spanish Mackerel Committee will receive updates on: the status of commercial and recreational catches versus quotas; the Joint Gulf and South Atlantic Mackerel Amendment 19, pertaining to permits and tournament sale requirements; and Amendment 20, regarding boundaries and transit provisions. The Committee will modify Amendments 19 and 20 as appropriate and provide guidance to staff. The Committee will review public input on the South Atlantic Mackerel Framework Amendment and will provide guidance to staff.

Note: There will be an informal public question and answer session with the NMFS Regional Administrator and the Council Chairman on September 12, 2012, beginning at 5:30 p.m.

7. *Advisory Panel Selection Committee Meeting: September 13, 2012, 8:30 a.m. until 9:30 a.m. (closed session)*

The Advisory Panel Selection Committee will review advisory panel applications and develop recommendations for appointments.

8. *Golden Crab Committee Meeting: September 13, 2012, 9:30 a.m. until 11 a.m.*

The Golden Crab Committee will receive a briefing on the golden crab permit holders meeting and an overview of Amendment 6, pertaining to establishing a catch share program for the commercial golden crab fishery. The Committee will modify the amendment as appropriate and will recommend the approval of Amendment 6 for formal review.

9. *Executive Finance Committee Meeting: September 13, 2012, 11 a.m. until 12 noon.*

The Executive Finance Committee will: review the status of Council Year (CY) 2012 budget expenditures; discuss joint South Florida management issues; and discuss other issues as appropriate.

Council Session: September 13, 2012, 1:30 p.m. until 5:30 p.m. and September 14, 2012, 8:30 a.m. until 12:30 p.m.

Council Session: September 13, 2012, 1:30 p.m. until 5:30 p.m.

1:30 p.m. until 2 p.m., the Council will call the meeting to order, adopt the agenda, approve the June 2012 meeting minutes, elect the Council chairman and vice-chairman, and present the Law Enforcement Officer of the Year award.

Note: A formal public comment session will be held on September 13, 2012, beginning at 2 p.m., on: Shrimp Amendment 9; the Joint Gulf and South Atlantic Dealer Permit; CE–BA 3; the emergency rule request to delay the start of the golden tilefish season; and Golden Crab Amendment 6; followed by comment on any other item on the agenda.

3:30 p.m. until 4 p.m., the Council will receive a presentation on the

changes in the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas.

4 p.m. until 4:30 p.m., the Council will receive a report from the Snapper Grouper Committee, address the Committee recommendation relative to the request for an emergency rule to delay the golden tilefish fishing season, consider other recommendations and take action as appropriate.

4:30 p.m. until 5:00 p.m., the Council will receive a report from the Ad Hoc Data Collection Committee, approve the Joint Gulf and South Atlantic Dealer Permit and CE–BA 3 for formal Secretarial review, consider recommendations and take action as appropriate.

5 p.m. until 5:15 p.m., the Council will receive a report from the King and Spanish Mackerel Committee, consider recommendations and take action as appropriate.

5:15 p.m. until 5:30 p.m., the Council will receive a report from the Ecosystem-Based Management Committee, consider recommendations and take action as appropriate.

Council Session: September 14, 2012, 8:30 a.m. until 12:30 p.m.

8:30 a.m. until 8:45 a.m., the Council will receive a legal briefing on litigation. (closed session)

8:45 a.m. until 9 a.m., the Council will receive a report from the Shrimp Committee, approve Amendment 9 for formal Secretarial review, consider other recommendations and take action as appropriate.

9 a.m. until 9:15 a.m., the Council will receive a report from the SEDAR Committee, consider recommendations and take action as appropriate.

9:15 a.m. until 9:30 a.m., the Council will receive a report from the Golden Crab Committee, approve Amendment 6 for formal Secretarial review, consider other recommendations and take action as appropriate.

9:30 a.m. until 9:45 a.m., the Council will receive a report from the Advisory Panel Selection Committee, consider Committee recommendations for appointments and take action as appropriate.

9:45 a.m. until 10 a.m., the Council will receive a report from the Executive Finance Committee, consider recommendations and take action as appropriate.

10 a.m. until 12:30 p.m., the Council will receive presentations and status reports from the NOAA Southeast Regional Office (SERO) and the NMFS SEFSC, review and develop recommendations on Experimental Fishing Permits as necessary, review agency and liaison reports, and discuss other business, including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda is subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 4, 2012.

Dated: August 20, 2012.

William D. Chappell,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20792 Filed 8–22–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC153

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys on the South Farallon Islands, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the National Ocean Service's Office of National Marine Sanctuaries Gulf of the Farallones National Marine Sanctuary (GFNMS) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to rocky intertidal monitoring work and searching for black abalone, components of the Sanctuary Ecosystem Assessment Surveys. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to GFNMS to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than September 24, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Nachman@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS is also preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The EA will be posted at the foregoing Internet site once it is finalized. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On May 13, 2012, NMFS received an application from GFNMS for the taking of marine mammals incidental to rocky intertidal monitoring work and searching for black abalone. NMFS determined that the application was adequate and complete on July 20, 2012.

GFNMS proposes to continue rocky intertidal monitoring work and the search for black abalone in areas previously unexplored for black abalone for periods of 4–8 days in November 2012 and February 2013. All work will be done only during daylight minus low tides. This is a long-term study that began in 1992 and at present is anticipated to continue beyond November 2013. This IHA, if issued, though, would only be effective for a 12-month period from the date of its issuance. In future years (depending on funding), survey activities may occur in February, August, and November. For purposes of the present application, four sites will be sampled during both November and February, with two additional sites to be sampled in February only. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: presence of survey personnel near pinniped haulout sites and approach of survey personnel towards hauled out pinnipeds. Take, by Level B harassment only, of individuals of five species of marine mammals is anticipated to result from the specified activity.

Description of the Specified Activity and Specified Geographic Region

Since the listing of black abalone as ''endangered'' under the U.S. Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), NMFS has requested that GFNMS explore as much of the shoreline as possible, as well as document and map the location of quality habitat for black abalone and the location of known animals. This listing prompted the need to expand the search for black abalone into other areas on the South Farallon Islands (beyond those that have been studied since 1992) to gain a better understanding of the abundance and health of the black abalone population in this remote and isolated location. The monitoring is planned to remain ongoing, and efforts to assess the status and health of the black abalone population on the South Farallon Islands may take several years, and perhaps decades, because black abalone tend to be very cryptic and difficult to find, especially when they are sparse and infrequent in occurrence. In order for the assessment of black abalone to be more comprehensive, GFNMS needs to expand shore searches in areas beyond the proximity of their quantitative quadrat sampling areas and also into new areas on Southeast Farallon and Maintop (West End) Islands.

Rocky intertidal monitoring on the Farallon Islands is now a component of the GFNMS Sanctuary Ecosystem Assessment Surveys (SEAS) long-term monitoring program and is a necessity to the management and protection of the sanctuary. All GFNMS SEAS monitoring projects are designed to provide documentation on the density and biodiversity of sanctuary natural resources for condition analyses, particularly for a baseline in the event of a major natural or human-induced perturbation. This program has and continues to acquire information on seasonal and annual changes of intertidal species abundances in 1–3 visits per year. The monitoring data, decades from now, can also be used to assess trends and changes from global climate change and ocean acidification, based on range extensions, changes in biodiversity, and changes in density of calcium carbonate-containing organisms.

Routine shore activity will continue to involve the use of only non-destructive sampling methods to monitor rocky intertidal algal and invertebrate species abundances (see Figure 2 in GFNMS' application). At each sampling site, there are three to four permanent 30 × 50 cm (12 × 20 in) quadrat sites that occur in the low, middle, and upper elevation tidal zones (marked by white epoxy pads in the quadrat corners). Three to four random quadrats (unmarked) are also sampled at each site every survey, if time permits. Fifty randomly selected points within each permanent and random quadrat are sampled, using methods described by Foster *et al.* (1991) and Dethier *et al.* (1993). All algal and sessile macroinvertebrate species under each sampling point (loci) are recorded. A photograph is also taken of each labeled quadrat. When completed, a shore walk in the immediate proximity is done by the sampling team to search for select large invertebrates. The length of the shoreline searched in the shore walks is typically about 30 m (98 ft), but plans are to expand this search effort over larger areas for abalone and in more areas. The sampling, photographic documentation, and shore walks for the period of this IHA have been scheduled to occur in November 2012 and February 2013. (In future years, surveys conducted under separate IHA(s) may occur 3 times annually: February, August, and November, based on funding.) Each survey will last for approximately 4 to 8 days. All work will be done only during daylight minus, low tides. Each location (as listed in Tables 2 and 3 in GFNMS' application) will be visited/sampled by three to four biologists, for a duration of 3–4 hours, one to two times each minus tide cycle, during November and February.

Inaccessible shore areas will be surveyed by boat up to once each year, dependent on boat availability and

weather conditions. This effort includes the Middle and North Farallon Islands. In this effort, the boat navigates to within 15–100 m (49–328 ft) of the shore, and intertidal species that can be seen through binoculars are recorded (presence/absence). PRBO Conservation Science (PRBO) continues its year-round pinniped and seabird research and monitoring efforts on the South Farallon Islands, which began in 1968, under MMPA scientific research permits and IHAs. GFNMS biologists will gain access to the sites via boats operated by PRBO, with disturbance and incidental take authorized via IHAs issued to PRBO. For this reason, GFNMS has not requested authorization for take from disturbance by boat, as incidental take from that activity is authorized in a separate IHA.

Specified Geographic Location and Activity Timeframe

The Farallon Islands consists of a chain of seven islands located approximately 48 km (30 mi) west of San Francisco, near the edge of the continental shelf and in the geographic center of the GFNMS (see Figure 1 in GFNMS' application). The land of the islands above the mean high tide mark is designated as the Farallon National Wildlife Refuge (managed by the U.S. Fish and Wildlife Service [USFWS]), while the shore and subtidal below are in GFNMS. The nearshore and offshore waters are foraging areas for pinniped species discussed in this document.

The two largest islands of the seven islands are the Southeast Farallon and Maintop (aka West End) Islands. These and several smaller rocks are collectively referred to as the South Farallon Islands and are the subject of this IHA request. The two largest islands are separated by only a 9 m (30 ft) wide surge channel. Together, these islands are approximately 49 hectares (120 acres) in size with an intertidal perimeter around both islands of 7.7 km (4.8 mi).

Current areas that are sampled during November and February are: Blow Hole Peninsula; Mussel Flat; Dead Sea Lion Flat; and Low Arch (see Figure 2 in GFNMS' application). Current areas that are sampled only during February are: Raven's Cliff and Drunk Uncle Islet. Areas to be added for intensive black abalone assessment and habitat mapping sampling during November and February include: East Landing; North Landing; Fisherman's Bay; and Weather Service Peninsula on Southeast Farallon Island. Areas to be added for intensive black abalone assessment and habitat mapping during February only include: Ravens' Cliff; Indian Head; Shell Beach; and Drunk Uncle Islet (see Figure 2 in GFNMS' application). Each sample site will be visited one to two times annually per minus tide cycle for 3–4 hours each visit. Tables 2 and 3 in GFNMS' application outline the schedule of sampling visits for each location.

Specific dates of sampling in February and November of each year will vary, as in the past, dependent on tide conditions, boat logistics to the island, staff schedules, island housing availability, seabird breeding cycles, and at the discretion of Refuge management. Each visit will last approximately 4–8 days in November 2012 and February 2013.

The shorelines on these islands, including areas above the mean high tide elevation, have become more heavily used over time as haulout sites for pinnipeds to rest, give birth, and molt. The intertidal zones where GFNMS conducts intertidal monitoring area also areas where pinnipeds can be found hauled out on the shore. Accessing portions of the intertidal habitat may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys. The species for which Level B harassment is requested are: California sea lions (*Zalophus californianus californianus*); harbor seals (*Phoca vitulina richardii*); northern elephant seals (*Mirounga angustirostris*); Stellar sea lions (*Eumetopias jubatus*); and northern fur seals (*Callorhinus ursinus*).

Description of Marine Mammals in the Area of the Specified Activity

Many of the shores of the two South Farallon Islands provide resting, molting, and breeding habitat for pinniped species: northern elephant seals; harbor seals; California sea lions; northern fur seals; and Steller sea lions. California sea lion is the species anticipated to be encountered most frequently during the specified activity. The other four species are only anticipated to be encountered at some of the sites. Tables 2 and 3 in GFNMS' application outline the average and maximum expected occurrences of each species at each sampling location in November and February, respectively. Numbers are based on weekly surveys conducted by PRBO. The data in these tables are from counts conducted in February and November 2010 and 2011. Figures 3, 4, and 5 in GFNMS' application depict the overlap between pinniped haulouts and abalone sampling sites. Of the five species noted here, only the eastern stock of Stellar sea lion (which is the stock found in the proposed activity area) is listed as threatened under the ESA and as depleted under the MMPA.

We refer the public to Carretta *et al.,* (2011) for general information on these species which are presented below this section. The publication is available on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf.* Additional information on the status, distribution, seasonal distribution, and life history can also be found in GFNMS' application.

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The estimated population of the California breeding stock is approximately 124,000 animals with a minimum estimate of 74,913 (Carretta *et. al.,* 2011).

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 330–800 m (1,000–2,500 ft) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

The population on the Farallon Islands has declined by 3.4 percent per year since 1983, and in recent years numbers have fluctuated between 100 and 200 pups (W. Sydeman, D. Lee, unpubl. data). At Southeast Farallon, the population consists of approximately 500 animals (GFNMS, 2012).

California Sea Lion

California sea lions are not listed as threatened or endangered under the

ESA, nor are they categorized as depleted under the MMPA. The California sea lion is now a full species, separated from the Galapagos sea lion (*Z. wollebaeki*) and the extinct Japanese sea lion (*Z. japonicus*) (Brunner, 2003; Wolf *et al.,* 2007; Schramm *et al.,* 2009). The estimated population of the U.S. stock of California sea lion is approximately 296,750 animals, and the current maximum population growth rate is 12 percent (Carretta *et al.,* 2011). On the Farallon Islands, California sea lions haul out in many intertidal areas year-round, fluctuating from several hundred to several thousand animals.

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et. al.,* 2011). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately 4–5 days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between 4 and 10 months of age (NMML, 2010). In central California, a small number of pups are born on Ano Nuevo Island, Southeast Farallon Island, and occasionally at a few other locations; otherwise, the central California population is composed of non-breeders. Breeding animals on the Farallon Islands are concentrated in areas where researchers generally do not visit (PRBO, unpub. data).

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The estimated population of the California stock of Pacific harbor seals is approximately 30,196 animals (Carretta *et. al.,* 2011).

The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardii* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental U.S., including: the outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2005). On the Farallon Islands, approximately 40 to 120 Pacific harbor seals haul out in the intertidal areas (PRBO, unpublished data). Harbor seals mate at sea, and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (NCCOS, 2007).

Steller Sea Lion

Steller sea lions consist of two distinct population segments: the western and eastern distinct population segments divided at 144° West longitude (Cape Suckling, Alaska). The eastern distinct population segment of the Steller sea lion is threatened, and the western distinct population segment is endangered under the ESA. Both segments are depleted under the MMPA. The eastern distinct population segment is the one anticipated to occur in the proposed project area. The eastern segment includes sea lions living in southeast Alaska, British Columbia, California, and Oregon.

Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.,* 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas.

In 2011, the estimated population of the eastern distinct population segment ranged from a minimum of 52,847 up to 72,223 animals, and the maximum population growth rate is 12.1 percent (Angliss and Allen, 2011).

The eastern distinct population segment of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California. There are no rookeries located in Washington State. Steller sea lions give birth in May through July, and breeding commences a couple of weeks after birth. Pups are weaned during the winter and spring of the following year.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al.,* 2004; Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007).

The current population of eastern Steller sea lions in the proposed research area is estimated to number between 50 and 750 animals. Overall, counts of non-pups at trend sites in California and Oregon have been relatively stable or increasing slowly since the 1980s (Angliss and Allen, 2011). PRBO estimates that between 50 and 150 Steller sea lions live on the Farallon Islands. On Southeast Farallon Island, the abundance of females declined an average of 3.6 percent per year from 1974 to 1997 (Sydeman and Allen, 1999). Pup counts on the Farallon Islands have generally varied from five to 15 (Hastings and Sydeman, 2002; PRBO, unpub. data).

Northern Fur Seal

Northern fur seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. Two stocks of northern fur seals are recognized in U.S. Pacific waters: Eastern Pacific stock and San Miguel Island stock. Adult females and juveniles migrate to the central California area (and Oregon and Washington) from rookeries on San Miguel Island in the Southern California Bight (Carretta *et al.,* 2006) and from the Pribilof Islands in the Bering Sea (NCCOS, 2007).

The most recent population estimate of the San Miguel Island stock is 9,968 animals (Carretta *et al.,* 2011) and is 653,171 animals for the Eastern Pacific stock (Allen and Angliss, 2011). The northern fur seal population on the Farallon Islands has fluctuated greatly over the past two centuries. Current PRBO weekly counts on Maintop Island show a peak of 296 adult and juvenile northern fur seals and 180 pups in 2011 (PRBO, unpub. data). Although it is difficult to differentiate, animals on the Farallon Islands during the time of the proposed rocky intertidal monitoring are likely from the San Miguel Island stock.

Other Marine Mammals in the Proposed Action Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 2 km (1.2 mi) of shore. PRBO has not encountered California sea otters on Southeast Farallon Island during the course of seabird or pinniped research activities over the past five years. This species is managed by the USFWS and is not considered further in this notice.

Potential Effects of the Specified Activity on Marine Mammals

The appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out on Southeast Farallon and Maintop (West End) Islands. Although marine mammals are never deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent abalone study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 m (3.3 ft) or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.,* 1984; Calambokidis *et al.,* 1991; Suryan and Harvey, 1999; Mortenson *et al.,* 2000). The Hawaiian monk seal (*Monachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon, 1972). And in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season (i.e., November 2012 and February 2013), the researchers will visit the islands for a total of 4–8 days each of the two months, and each site is not visited during both months. Visits to each site are thus separated by several months. Each site visit typically lasts 3–4 hours. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus, an occurrence that is not expected on Southeast Farallon and Maintop Islands. The three situations are (1) falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of elephant seal pups by large males during a stampede.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (e.g., cliffs). However, while cliffs do exist on the islands, shoreline habitats near the abalone study sites are of steeply sloping rocks with unimpeded and non-obstructive access to the water. If disturbed, hauled-out animals in these situations may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area. In these circumstances, the risk of injury, serious injury, or death to hauled-out animals is very low. Thus, abalone research activity poses no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations.

The risk of marine mammal injury, serious injury, or mortality associated with abalone research increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. The risk of either of these situations is greater in the event of a stampede.

The proposed site visits in November and February fall outside of the pupping and breeding seasons for California sea lions, harbor seals, northern fur seals, and Steller sea lions. The most sensitive months for northern elephant seals are generally December through March. However, though elephant seal pups are occasionally present when researchers visit abalone survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence than the other two species. Further, pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of elephant seal pups. No research would occur where separation of mother and her nursing pup or crushing of pups can become a concern.

In summary, NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds because (1) the timing of research visits would preclude separation of mothers and pups for four of the pinniped species, as activities occur outside of the pupping/breeding season and (2) elephant seals are generally not susceptible to disturbance as a result of researchers' presence. In addition, researchers will exercise appropriate caution approaching sites, especially when pups are present and will redirect activities when pups are present.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the proposed activity is the quadrat locations being marked with marine epoxy. The plot corners are marked with a 3x3 cm (1.2x1.2 in) patch of marine epoxy glued to the benchrock for relocating the quadrat sites. Markers have been in place since 1993, and pinniped populations have increased throughout the islands during this time. Maintenance is sometimes required, which consists of replenishing worn markers with fresh epoxy or replacing markers that have become dislodged. No

gas power tools are used, so there is no potential for noise or accidental fuel spills disturbing animals and impacting habitats. Thus, the proposed activity is not expected to have any habitat-related effects, including to marine mammal prey species, that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

GFNMS proposes to implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include: (1) Coordinating sampling efforts with other permitted activities (i.e., PRBO and USFWS); (2) conducting slow movements and staying close to the ground to prevent or minimize stampeding; (3) avoiding loud noises (i.e., using hushed voices); (4) vacating the area as soon as sampling of the site is completed; (5) monitoring the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters; (6) using binoculars to detect pinnipeds before close approach to avoid being seen by animals; and (7) rescheduling work at sites where pups are present, unless other means to accomplishing the work can be done without causing disturbance to mothers and dependent pups.

The methodologies and actions noted in this section will be utilized and included as mitigation measures in any issued IHA to ensure that impacts to marine mammals are mitigated to the lowest level practicable. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. In general, researchers will stay inshore of pinnipeds whenever possible to allow maximum escape to the ocean. Each visit to a given study site will last for approximately 4 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of abalone researchers. By arriving before low tide, worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

The following measures are proposed for implementation to avoid disturbances to elephant seal pups. Disturbances to females with dependent pups can be mitigated to the greatest extent practicable by avoiding visits to those intertidal sites with pinnipeds that are actively nursing, with the exception of northern elephant seals. The time of year when GFNMS plans to sample avoids disturbance to young, dependent pups, with the exception of northern elephant seals. Thus, early February and November, at minimum, are preferable for the proposed intertidal survey work in order to minimize the risk of harassment. Harassment of nursing northern elephant seal pups may occur but only to a limited extent. Disruption of nursing to northern elephant seal pups will occur only as biologists pass by the area. No flushing on nursing northern elephant seal pups will occur, and no disturbance to newborn northern elephant seals (pups less than one week old) will occur. Moreover, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. In the event of finding pinnipeds breeding and nursing, the intertidal monitoring activities will be re-directed to sites where these activities and behaviors are not occurring. This mitigation measure will reduce the possibility of takes by harassment and further reduce the remote possibility of serious injury or mortality of dependent pups.

GFNMS will suspend sampling and monitoring operations immediately if an injured marine mammal is found in the vicinity of the project area and the abalone site sampling activities could aggravate its condition.

NMFS has carefully evaluated GFNMS' proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Currently many aspects of pinniped research are being conducted by PRBO scientists on the Farallon Islands, which includes elephant seal pup tagging and behavior observations with special notice to tagged animals. Additional observations are always desired, such as observations of pinniped carcasses bearing tags, as well as any rare or unusual marine mammal occurrences. GFNMS' observations and reporting will add to the observational database and on-going marine mammal assessments on the Farallon Islands.

GFNMS can add to the knowledge of pinnipeds on the South Farallon Islands by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Proposed monitoring requirements in relation to GFNMS' abalone research surveys will include observations made

by the applicant. Information recorded will include species counts (with numbers of pups/juveniles), numbers of observed disturbances, and descriptions of the disturbance behaviors during the abalone surveys. Observations of unusual behaviors, numbers, or distributions of pinnipeds on the South Farallon Islands will be reported to NMFS and PRBO so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to NMFS and PRBO.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the proposed abalone research, GFNMS will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2012–2013 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS Southwest Office Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. Animals hauled out close to the actual survey sites may be disturbed by the presence of biologists and may alter their behavior or attempt to move away from the researchers. No motorized equipment is involved in conducting the proposed abalone monitoring surveys.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed. The distribution of pinnipeds hauled out on beaches is not consistent throughout the year. The number of marine mammals disturbed will vary by month and location. PRBO obtains weekly counts of pinnipeds on the South Farallon Islands, dating back to the early 1970s. GFNMS used data collected by PRBO in February and November 2010 and 2011 (since those are the months they propose to conduct their abalone monitoring in 2012 and 2013) to estimate the number of pinnipeds that may potentially be taken by Level B (behavioral) harassment. Table 3 in GFNMS' IHA application and Table 1 here present the maximum numbers of California sea lions, harbor seals, northern elephant seals, northern fur seals, and Steller sea lions that may be present at the various sampling sites in November and February. As indicated in the table, some sites will be sampled in both months and others only in one of the two survey months. Based on this information, NMFS proposes to authorize the take, by Level B harassment only, of 6,850 California sea lions, 175 harbor seals, 225 northern elephant seals, 20 northern fur seals, and 95 Steller sea lions. These numbers are considered to be maximum take estimates; therefore, actual take may be slightly less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

No injuries or mortalities are anticipated to occur as a result of GFNMS' rocky intertidal monitoring work and searching for black abalone, and none are proposed to be authorized. The behavioral harassments that could occur would be of limited duration, as researchers only conduct sampling two times per year for a total of 4–8 days each time. Additionally, each site is sampled for approximately 3–4 hours before moving to the next sampling site. Therefore, disturbance will be limited to a short duration, allowing pinnipeds to reoccupy the sites within a short amount of time.

Some of the pinniped species use the islands to conduct pupping and/or breeding. However, with the exception of northern elephant seals, GFNMS will conduct its abalone site sampling outside of the pupping/breeding seasons. GFNMS has proposed measures to minimize impacts to northern elephant seals nursing or tending to dependent pups. Such measures will avoid mother/pup separation or trampling of pups.

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Table 1. Estimated number of animals to be disturbed at each sampling site during each month of surveys based on maximum daily counts of pinnipeds estimated from PRBO monitoring data and the total proposed number of Level B harassment takes to be authorized for each species.

	East Landing & Blowhole Peninsula	North Landing & Fisherman's Bay	Dead Sea Lion Flat	Mussel Flat	Low Arch	Weather Service Peninsula**	Raven's Cliff**	Indian Head**	Shell Beach**	Drunk Uncle Islet & Pelican Bowl**	**Proposed Level B Take**
CA Sea Lion November	5	520	880	180	575	120	NA	NA	NA	NA	
CA Sea Lion February	50	35	850	110	280	215	260	775	1420	575	
Total	55	555	1730	290	855	335	260	775	1420	575	**6850**
Harbor Seal November	10	10	5	50	-	5	NA	NA	NA	NA	
Harbor Seal February	10	20	10	55	-	-	-	-	-	-	
	20	30	15	105	0	5	0	0	0	0	**175**
N. Elephant Seal November	-	40	25	60	45	-	NA	NA	NA	NA	
N. Elephant Seal February	-	5	5	5	5	-	-	25	10	-	
Total	0	45	30	65	50	-	0	25	10	0	**225**
N. Fur Seal November	-	-	-	-	-	-	NA	NA	NA	NA	
N. Fur Seal February	-	-	-	-	-	-	-	20	-	-	
Total	0	0	0	0	0	0	0	20	0	0	**20**
Steller Sea Lion November	-	-	10	-	-	-	NA	NA	NA	NA	
Steller Sea Lion February	-	-	15	15	5	5	5	20	20	-	
Total	0	0	25	15	5	5	5	20	20	0	**95**

* Estimates above are based on the SEAS team sampling each area once in each month indicated.
NA: Not applicable.
**These areas on Maintop Island (West End Island) will not be sampled in November to minimize disturbance to seabirds and marine mammals.

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Of the five marine mammal species anticipated to occur in the proposed activity areas, only the Steller sea lion is listed as threatened under the ESA. The species is also designated as depleted under the MMPA. Table 2 in this document presents the abundance of each species or stock, the proposed take estimates, and the percentage of the affected populations or stocks that may be taken by harassment. Based on these estimates, GFNMS would take less than 1% of each species or stock, with the exception of the California sea lion, which would result in an estimated take of 2.3% of the stock. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the rocky intertidal monitoring program will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the rocky intertidal monitoring program will have a negligible impact on the affected species or stocks.

TABLE 2—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE PROPOSED ROCKY INTERTIDAL MONITORING PROGRAM

Species	Abundance*	Total proposed level B take	Percentage of stock or population
Harbor Seal	30,196	175	0.6
California Sea Lion	296,750	6,850	2.3
Northern Elephant Seal	124,000	225	0.2
Steller Sea Lion	58,334–72,223	95	0.1–0.2
Northern Fur Seal	9,968	20	0.2

* Abundance estimates are taken from the 2011 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.,* 2012).

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There is one marine mammal species listed as threatened under the ESA with confirmed or possible occurrence in the proposed project area: the eastern U.S. stock of Steller sea lion. NMFS' Permits and Conservation Division has determined that issuance of the proposed IHA to GFNMS under section 101(a)(5)(D) of the MMPA may affect this species and has initiated consultation with NMFS' Endangered Species Division under section 7 of the ESA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment (EA), pursuant to NEPA, to determine whether the issuance of an IHA to GFNMS for its 2012–2013 rocky intertidal monitoring activities may have a significant impact on the human environment. This analysis and a determination on whether to issue a Finding of No Significant Impact (FONSI) will be completed prior to the issuance or denial of this proposed IHA. This identifies our environmental issues and provides environmental issues relevant to the proposed action. Members of the public are invited to provide comments, and NMFS will consider and evaluate responsive comments as it prepares the EA and decides whether to issue a FONSI.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to GFNMS' rocky intertidal and black abalone monitoring research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 16, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–20790 Filed 8–22–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Proposal To Exempt Certain Transactions Involving Not-for-Profit Electric Utilities; Request for Comments

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') is proposing to exempt certain transactions between not-for-profit utilities (entities described in section 201(f) of the Federal Power Act (''FPA'')), and other electric utility cooperatives, from the provisions of the Commodity Exchange Act (''CEA'' or ''Act'') and the regulations there under, subject to certain antifraud, anti-manipulation, and recordkeeping conditions. Authority for this exemption is found in section 4(c) of the CEA. The Commission is requesting comment on every aspect of this Notice of Proposed Order (''Notice'').

DATES: Comments must be received on or before September 24, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC's regulations.[1]

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: David Van Wagner, Chief Counsel, (202) 418–5481, *dvanwagner@cftc.gov,* or Graham McCall, Attorney Advisor, (202) 418–6150, *gmccall@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette

[1] 17 CFR 145.9.

Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Introduction

On June 8, 2012, the Commission received a petition (''Petition'') [2] from a group of trade associations that represent government and/or cooperatively-owned electric utilities requesting relief from the requirements of the CEA [3] and Commission's regulations thereunder,[4] pursuant to CEA section 4(c),[5] for certain electric energy-related transactions between not-for-profit electric energy utilities. In this Notice, after summarizing and reviewing the representations made in the Petition, the Commission proposes conditional relief pursuant to CEA section 4(c) for non-financial energy transactions between not-for-profit utilities described in FPA section 201(f) and other electric cooperatives.

A. CEA Section 4(c)

Section 4(c) of the CEA provides the Commission with broad authority to exempt certain transactions and market participants from the requirements of the Act. When adding section 4(c) to the CEA, Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [6] The House-Senate Conference Committee reconciling the provision's language noted that:

> The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the [CEA]. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption.[7]

Specifically, CEA section 4(c)(1) empowers the CFTC to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction (or class thereof) that otherwise would be subject to CEA section 4(a), or any person (or class thereof) dealing in such transaction(s), from any or all of the provisions of the CEA where the Commission determines that the exemption would be consistent with the public interest.[8] The Commission may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person [9] or on its own initiative.

CEA section 4(c)(2) provides that the Commission shall not grant any exemption under section 4(c)(1) from any of the requirements of section 4(a) unless the Commission determines, among other things, that: (i) the exemption would be consistent with the public interest and the purposes of the CEA; (ii) the exempt agreement, contract, or transactions will be entered into solely between ''appropriate persons;'' and (iii) the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.[10]

CEA section 4(c)(3) outlines which entities may constitute ''appropriate person[s]'' for purposes of a CEA section 4(c) exemption, including (as relevant to this Notice): (i) Any governmental entity (including the United States, any State, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; [11] or (ii) such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.[12]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [13] added new subparagraph

[2] The Petition is available on the Commission's Web site at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nrecaetalltr060812.pdf*.

[3] 7 U.S.C. 1 *et seq.*

[4] The Commission's regulations are set forth in title 17 of the Code of Federal Regulations (''CFR'').

[5] 7 U.S.C. 6(c).

[6] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (''4(c) Conf. Report'').

[7] 4(c) Conf. Report at 3214–3215.

[8] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that:

> In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter * * * if the Commission determines that the exemption would be consistent with the public interest.

[9] CEA section 1a(38) defines ''person'' to include ''individuals, associations, partnerships, corporations, and trusts.'' 7 U.S.C. 1a(38).

[10] *See* 7 U.S.C. 6(c)(2).

[11] *See* 7 U.S.C. 6(c)(3)(H).

[12] *See* 7 U.S.C. 6(c)(3)(K).

[13] Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm*. Title VII of the Dodd-Frank Act amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing clearing and trade execution requirements

Continued

4(c)(6)(C) to the CEA.[14] CEA section 4(c)(6)(C) builds upon the Commission's general exemptive authority in section 4(c)(1) as follows:

(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with [CEA sections 4(c)(1) and 4(c)(2)], exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

[* * *]

(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

Thus, section 4(c)(6)(C) explicitly spotlights transactions between entities within the scope of FPA section 201(f) as being eligible for exemption pursuant to the Commission's 4(c) authority. However, whether an exemption is considered under 4(c)(1), 4(c)(6)(C), or both,[15] the CFTC must first determine that the proposed exemption meets certain threshold criteria including, for example, that the exemption would be consistent with the public interest and the purposes of the Act.

B. FPA Section 201(f)

The FPA [16] authorizes and, along with other statutes, governs the Federal Energy Regulatory Commission (''FERC''), the federal agency that regulates the interstate transmission and sale at wholesale in interstate commerce of electric energy by public utilities, as well as natural gas and hydropower projects.[17] Section 201(f) of the FPA, which Congress referenced in new CEA section 4(c)(6)(C), provides broad-based relief from most provisions of Part II [18] of the FPA for certain government and cooperatively-owned electric utility companies and states that:

[n]o provision in this subchapter [Part II of the FPA] shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.[19]

II. Petition

A. Relief Requested

As noted above, on June 8, 2012, the Commission received the Petition [20] from a group of trade associations representing government and/or cooperatively-owned electric utilities. Those Petitioners consisted of the National Rural Electric Cooperative Association (''NRECA''),[21] the American Public Power Association (''APPA''),[22] the Large Public Power Council (''LPPC''),[23] the Transmission Access Policy Study Group (''TAPS''),[24] and the Bonneville Power Administration (''BPA'') [25] (collectively, the ''Petitioners''). The Petition requests that the Commission provide categorical exemptive relief from the requirements of the CEA, pursuant to CEA section 4(c)(6), in accordance with CEA sections 4(c)(1) and 4(c)(2), for *all* ''Electric Operations-Related Transactions'' between ''NFP Electric Entities,'' retroactive to the enactment of Dodd-Frank, outstanding now, or that may be developed and executed in the future.[26] The Petitioner's definition and scope of the terms ''Electric Operations-Related Transactions'' and ''NFP Electric Entities'' is summarized below.[27]

B. Definition and Scope of Electric Operations-Related Transactions

The Petition defines Electric Operations-Related Transactions to mean:

Any agreement, contract or transaction involving a ''commodity'' (as such term is defined in the CEA) and whether or not such agreement, contract or transaction is a

on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

[14] 7 U.S.C. 6(c)(6)(C) (as added by section 722(f) of the Dodd-Frank Act).

[15] For any exemption involving CEA section 4(c)(6), the Commission believes ''both'' is the correct characterization because CEA section 4(c)(6) explicitly directs the Commission to consider any exemption proposed under 4(c)(6) ''in accordance with [sections 4(c)(1) and 4(c)(2)].''

[16] 16 U.S.C. 791a *et seq.*

[17] *See www.ferc.gov.*

[18] Part II of the FPA governs the transmission and sale at wholesale of electric energy in interstate commerce, including the facilities used for such transmission or sale. *See* 16 U.S.C. 824 *et seq.* Section 201(f) does not, however, provide an exemption from FPA parts I or III. Part I of the FPA deals with the establishment and functioning of FERC and the regulation of hydroelectric resources. *See* 16 U.S.C. 792 *et seq.* Part III of the FPA deals with recordkeeping and reporting requirements and FERC's procedural rules concerning complaints, investigations, and hearings. *See* 16 U.S.C. 825 *et seq.* Additionally, section 201(f) does not provide an exemption from FERC's refund authority, 16 U.S.C. 824e, reliability standards, 16 U.S.C. 824o(b)(1), or jurisdiction over transmission facilities and services, 16 U.S.C. 824(i)–(j).

[19] 16 U.S.C. 824(f).

[20] The Petition is available on the Commission's Web site at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nrecaetalltr060812.pdf.*

[21] According to the Petition, NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives and government-owned power districts. NRECA's members provide electric energy to approximately 42 million consumers in 47 states, or thirteen percent of the nation's population. *See* Petition at 3.

[22] According to the Petition, APPA is the national trade association that represents the interests of government-owned electric utilities in the United States. APPA's member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. Approximately 2,000 government-owned electric utilities provide over fifteen percent of all kilowatt hour (''KWh'') sales to retail electric customers. *See* Petition at 3–4.

[23] According to the Petition, LPPC is an organization representing 24 of the largest government-owned electric utilities in the nation. LPPC members own and operate over 86,000 megawatts of generation capacity and nearly 35,000 circuit miles of high voltage transmission lines, representing nearly 90 percent of the transmission investment owned by non-Federal government-owned electric utilities in the United States. *See* Petition at 4.

[24] According to the Petition, TAPS is an association of transmission dependent electric utilities located in more than 30 states. All of TAPS member electric utilities except one are FPA section 201(f) entities. *See* Petition at 4.

[25] According to the Petition, BPA is a self-financed, non-profit Federal agency created in 1937 by Congress that primarily markets electric power from 31 federally owned and operated projects, and supplies 35 percent of the electricity used in the Pacific Northwest. BPA also owns and operates 75 percent of the high-voltage transmission in the Pacific Northwest. BPA's primary statutory responsibility is to market its Federal system power at cost-based rates to its ''preference customers.'' Per the Petition, BPA has 130 preference customers made up of electric utilities which are not subject to the jurisdiction of FERC, including Indian tribes, electric cooperatives, and state and municipally chartered electric utilities, and other Federal agencies located in the Pacific Northwest. *See* Petition at 4.

[26] *See* Petition at 1–2; 4 (emphasis added). The Petition also requests that the Commission determine that no Electric Operations-Related Transaction will affect any NFP Electric Entity's regulatory status under the CEA (*e.g.,* as a swap dealer or major swap participant). *Id.* at 28. The Petition specifically asks that, if the Commission declines to provide the categorical relief as requested, the Commission would i) include an additional category of approved Electric Operations-Related Transactions that includes all ''trade options'' referencing the goods or services described in the categories of transactions currently outstanding between Exempt Entities (*see infra* sections II.B.1–7), and ii) delegate to Commission staff the authority to review on an expedited basis and approve as eligible for the benefit of the exemptive order any new Electric Operations-Related Transactions between NFP Electric Entities. *Id.* at 13. Finally, the Petition invites the Commission to determine that any Electric Operations-Related Transaction described in the Petition does not need an exemption because such transaction is not a ''swap,'' is a ''commercial merchandising arrangement'' or ''trade option,'' or is not an agreement, contract or transaction involving a ''commodity.'' *See id.* at 13, note 26.

[27] In this Notice, the Commission describes the Petition by referencing Petitioners' defined terms. Such references, however, are not to be interpreted as the Commission proposing to adopt such terms for the purpose of the exemption proposed herein. Rather, the proposed exemption establishes its own defined entities and transactions for which relief is being provided.

''swap,'' so long as the NFP Electric Entity is entering into any such agreement, contract or transaction ''to hedge or mitigate commercial risks'' (as such phrase is used in CEA Section 2(h)(7)(A)(ii)) intrinsically related to the electric facilities or electric operations (or anticipated facilities or operations) of the NFP Electric Entity, or intrinsically related to the NFP Electric Entity's public service obligation to deliver reliable, affordable electric energy service to electric customers. For the avoidance of doubt, ''intrinsically related'' shall include all transactions related to (i) the generation, purchase or sale, and transmission of electric energy by the NFP Electric Entity, or the delivery of reliable, affordable electric energy service to the NFP Electric Entity's electric customers, (ii) all fuel supply for the NFP Electric Entity's electric facilities or operations, (iii) compliance with electric system reliability obligations applicable to the NFP Electric Entity, its electric facilities or operations, (iv) compliance with energy, conservation or renewable energy or environmental statutes, regulations or government orders applicable to the NFP Electric Entity, its electric facilities or operations, or (v) any other electric operations-related agreement, contract or transaction to which the NFP Electric Entity is a party. Electric Operations-Related Transactions shall *not* include agreements, contracts or transactions executed, traded, or cleared on a registered entity, nor shall such defined term include an agreement, contract or transaction based or derived on, or referencing, a ''commodity'' in the interest rate, credit, equity or currency asset class, or of a product type or category in the ''Other Commodity'' asset class that is based or derived on, or referencing, metals, or agricultural commodities or crude oil or gasoline commodities of any grade not used as fuel for electric generation.[28]

In general, the Petitioners represent that all Electric Operations-Related Transactions covered by the proposed definition are intrinsically related to the needs of both NFP Electric Entities engaged in a transaction ''to hedge or mitigate commercial risks'' which arise from their respective electric facilities and ongoing electric operations and public service obligations.[29] The Petitioners state that, at the time two NFP Electric Entities enter into an Electric Operations-Related Transaction, the terms of the transaction contemplate performance of an electric operations-related obligation by one party, in exchange for payment or reciprocal performance of an electric operations-related function by the other party.[30]

The Petition, which is summarized herein, specifically describes seven categories of transactions that currently occur between NFP Electric Entities, and which are covered by the Petition's proposed definition.[31]

1. Electric Energy Delivered

In these transactions, NFP Electric Entities agree for one such entity to provide another such entity with electric energy delivered to an identified geographic service territory, load,[32] or electric system. Petitioners note that since electric energy is not currently storable in commercial quantities, the delivery location is critical to the transaction—electric energy delivered elsewhere is not usable or valuable for the receiving entity's operational needs.

As described by the Petitioners, this transaction type includes the most prevalent type of Exempt Electric Operations-Related Transaction between NFP Electric Entities, *i.e.,* the ''full requirements'' contract, or ''all requirements'' agreement or arrangement[33] that is often executed between a generation and transmission (''G&T'') cooperative (*i.e.,* a cooperative that generates and transmits electricity) and each of its constituent NFP Electric Entity members/owners, or between a Joint Action Agency (an agency formed under state law to provide wholesale power supply and transmission service to member entities) and each of its constituent NFP Electric Entity members. In some instances, the G&T cooperative or the Joint Action Agency is formed by its constituent members for the singular purpose of providing its constituent members with their ''full requirements'' obligations to deliver electric energy over an agreed delivery period at one or multiple delivery points or locations to their retail electric customers).

In such an arrangement, the provider NFP Electric Entity agrees by bilateral contract or, in some long-standing relationships established by governing or legal documents of the G&T cooperative or Joint Action Agency as the provider NFP Electric Entity, that it will provide for a recipient NFP Electric Entity's ''full requirements'' to provide reliable electric service to the recipient's fluctuating electric energy load over an agreed delivery period at one or multiple delivery points or locations. In some cases, the delivery period, term, or ''tenor'' of such agreements can be for thirty years or more.

In addition to providing the recipient's full requirements for electric energy, the arrangement may also include providing services that are ancillary to the delivery of the electric energy, such as operating or dispatching one or more of the recipient's owned generation units, generation capacity or balancing services, or any of the other goods, services, or commodities required by the recipient described under other categories below.

The Petition notes that quantities of electric energy will also vary during the delivery period. If a recipient NFP Electric Entity owns some generation itself, the quantity of supplemental electric energy or capacity to meet its ''full requirements'' during some seasons, months, or days of the year (net of its owned generation) may be zero. Some ancillary services or ''commodities'' under such a transaction may be optional. Pricing may vary on a seasonal, monthly, daily or on-peak/off-peak basis, or may be tied to the cost at which the provider NFP Electric Entity can generate or purchase electric energy. Alternatively, the price may be tied to the fuel that the provider uses for generating the electric energy provided.

2. Generation Capacity

In describing this transaction category, the Petition initially notes that the term ''capacity,'' in connection with generation capacity transactions, has varying meanings across the electric industry, and that electric operations professionals may reference any of a number of ''capacity'' agreements, contracts, transactions, or arrangements.[34] More generally, the

[28] Petition at 4–5.

[29] *See* Petition at 12.

[30] *See id.* The Petition notes that the terms ''physically-settled,'' ''financially-settled,'' and ''cash-settled,'' as such terms are used in the futures industry, do not translate easily into a commercial context where NFP Electric Entities enter into bilateral contracts governed by state law or by FERC, PUCT or state public utility tariffs to buy and sell goods and services. It is not readily apparent to the Commission why the terms do not translate conceptually. Nevertheless, as previously noted, the Petition represents that Electric Operations-Related Transactions between NFP Electric Entities are always intrinsically related to the electric facilities and operations, and/or the public service obligations, of each of the NFP Electric Entities involved. *See id.* at 12, n. 24.

[31] The following transaction category descriptions come from the Petition at 6–12.

[32] The Commission understands that ''load'' is an energy industry term for ''demand.'' *See, e.g.,* Current Energy, Supply of and Demand for Electricity in California, *available at http://currentenergy.lbl.gov/ca/index.php* <last visited July 9, 2012> (explaining that ''[t]he current demand (or 'load') depends on how much power consumers are using right now'').

[33] Per the Petition, the ''full'' or ''all'' requirements contract is a bilateral commercial arrangement that is customized to the two NFP Electric Entities that are parties thereto.

[34] Counsel for Petitioners represented in subsequent conversations that generation capacity, generally, can mean the capability or adequacy of specific owned generation units to supply fluctuating load requirements within a defined geographic region (*e.g.,* an RTO region or an electric utility system) at an estimated or capacity rating level measured in megawatts. The basic concept of generation capacity can be understood as a separate ''commodity'' from electric energy delivered (or other ancillary service or reserve), such that the purchase and sale of generation capacity may exist

Continued

Petition notes that when two NFP Electric Entities agree that one will provide ''generation capacity'' or ''capacity'' for another, either a mutual understanding of the engineering context or a customized bilateral commercial contract further defines the parties' respective rights and obligations. Generation capacity is always location-specific and is monitored by the regional transmission organization (''RTO'') or independent system operator (''ISO'') [35] or, outside the RTO/ISO regions, by balancing authorities or reliability coordinators under the supervision of the North American Electric Reliability Corporation (''NERC'') and FERC.[36] Deliverability of generation capacity to a particular geographic point or electric system interface is such an important concept that FERC requires each RTO, ISO, and balancing authority to establish a framework of engineering studies to demonstrate/confirm that a particular generation unit's electrical energy output is deliverable. If generation capacity from a particular unit does not satisfy the relevant RTO, ISO or balancing authority's deliverability requirements, that generation capacity has no value in meeting reliability requirements in that reliability area. If generation capacity is purchased from a generation unit located outside the relevant reliability area, the correlated electric energy (which, if ''called on,'' must be delivered) nonetheless must be deliverable to the relevant reliability area.

Some generation capacity agreements or arrangements among NFP Electric Entities may include operational reserves attributable to the identified generation unit. A generation capacity arrangement or transaction also may be called a ''shared resources agreement,'' whereby NFP Electric Entities agree conditionally to share capacity resources as needed. The contract may relate to multiple identified units owned or operated by both NFP Electric Entities. For example, some state or regional programs to manage limited generation capacity and maintain voltage support for the electric grid in a geographic area may allow NFP Electric Entities subject to such program to utilize ''demand-side resources'' as part of the generation capacity required by the specific balancing authority, or to meet the reliability authority's requirements in the relevant geographic region.

In general, a generation capacity transaction between two NFP Electric Entities in one region cannot be presumed to be fungible with any other generation capacity transaction between two other NFP Electric Entities, even in the same region.

3. Transmission Services

As with the other transaction categories described by the Petitioners, the Petition notes that electric transmission services transactions between NFP Electric Entities will vary by geographic region and by assets owned and transmission services required by the operations of different NFP Electric Entities. In some cases, these transmission services agreements include congestion management services, system losses, and ancillary services.[37] Some NFP Electric Entities own significant transmission facilities (*e.g.,* BPA owns 75 percent of the transmission lines in the Pacific Northwest). In some cases, Federal law and the regulations pursuant to which the Federal power agencies are formed and operate require a particular Federal power agency to allocate a portion of the transmission to particular electric entities, including NFP Electric Entities, located within its geographic area.

In certain areas of the country, the RTOs/ISOs control allocation of transmission assets, rights and services, and the individual owners of transmission assets do not have the ability to engage in bilateral services arrangements involving those transmission assets, which are under RTO/ISO management and control. In other areas of the country, historical transmission services agreements, including those between NFP Electric Entities, are ''grandfathered'' from the RTO/ISO rules and procedures otherwise applicable to electric transmission services in that region.

4. Fuel Delivered

The Petition describes a fourth category of transactions in which one NFP Electric Entity delivers to another NFP Electric Entity fuel to power electric generation facilities. The electric facilities owned and operated by NFP Electric Entities vary widely in terms of the fuel used by such facilities for generation. Fuel types may include nonfinancial commodities such as coal, natural gas, uranium products, heating oil, and biomass or waste products including wood chips, tires, and manure. In addition to the fuel, one NFP Electric Entity may provide to another NFP Electric Entity other services related to the fuel commodity, such as fuel procurement, fuel transportation over pipeline, rail, barge and truck, fuel storage, or fuel waste handling and storage services.[38]

as a stand-alone transaction or as one component of a ''bundled energy'' service or transaction, such as a full requirements contract. When viewed as an ''option-like'' commodity transaction, generation capacity can be ''delivered'' if the ''holder'' (or relevant reliability authority) calls on the corollary electric energy to be delivered. In some circumstances, the ''premium'' component can be priced separately and referred to as a ''demand charge.'' In others, the generation capacity component can be a contingent or option-like aspect of a seller's obligation to provide the ''full requirements'' that a load serving entity (''LSE'') needs to serve the electric consumers and businesses in its regions, including fulfillment of any generation capacity obligations that the LSE has to its local reliability authority.

[35] More information is available at *http://www.ferc.gov/industries/electric/indus-act/rto.asp*. The current ISO/RTO entities operating in North America are PJM Interconnection, Midwest Independent Transmission System Operator, Southwest Power Pool, ISO New England, California ISO, New York Independent System Operator and the Electric Reliability Council of Texas (ERCOT). Each of these entities, other than ERCOT, was either formed at the direction of FERC or designated by FERC to direct the operation of the regional electric transmission grid in its specific geographic area. ERCOT is fully regulated by the Public Utility Commission of Texas (the ''PUCT'').

[36] Counsel for Petitioners in subsequent conversations represented that generation capacity can be a reliability requirement that, in some areas, owners of generation units must maintain in order to provide voltage and frequency support to the electric grid for reliability purposes. In other areas, generation capacity reliability requirements may be imposed on LSEs that must, if they own no generation assets, purchase generating capacity from third-party generators to fulfill the LSEs' reliability requirements.

[37] The Petition notes that the concept of generation capacity is distinguishable from ''transmission capacity,'' which relates to the limited amount of electric energy transmission available over the interconnected electric transmission grid, and which is generally defined as a measure of the transfer capability or ''capacity'' remaining in the physical electric energy transmission network for further commercial activity over and above already committed uses. Additionally, Exhibit 2 of the Petition provides the following example:

Federal power agency K sells to G&T cooperative J 100 MWs of monthly ''firm point-to-point transmission service'' from location X to location Y in the southeast U.S. for a term of 3 months at the tariff rate of $2,000/MW-Month for a total transaction value of $600,000. The geographic area in which such transmission service takes place is outside the ''footprint'' of an RTO, and therefore the transmission service is reserved on the Open Access Same Time Information System (''OASIS'') Web site of the transmission owner, K. J intends to use the transmission service to deliver wholesale electric power to its distribution cooperative member-owners to supply a portion of its distribution cooperative constituents' retail electric load.

Petition Exhibit 2 at 3.

[38] Petitioners also described a scenario in which one NFP Electric Entity may agree to manage for another NFP Electric Entity the operational basis or exchange (location/time of delivery) risk that arises from the recipient's NFP Electric Entity's location-specific, seasonal, or otherwise variable operational need for fuel delivered. Another example from Exhibit 2 of the Petition provides that:

Joint power agency L supplies to municipal utility M a long-term supply of natural gas from a natural gas project (Project Entity Z) developed by L and other NFP Electric Entities for the purpose

5. Cross-Commodity Transactions

The Petition describes such transactions as commercial agreements entered into between two NFP Electric Entities, including options, heat rate transactions and tolling arrangements, whereby the electric energy delivered to the recipient NFP Electric Entity is priced by reference to the fuel source used or useable by the provider NFP Electric Entity for generating such electric energy. Alternatively, the price paid for the fuel by the recipient NFP Electric Entity may be calculated by reference to the amount of electricity that the recipient NFP Electric Entity generates using such fuel.

6. Other Goods and Services

The Petition notes that these agreements may involve sharing property rights, equipment, supplies and services, including construction, operation, and maintenance agreements, facilities management, construction management, energy management or other energy-related services tied to the electric facilities owned by, or operations of, one or both of the NFP Electric Entities, including emergency assistance or ''mutual aid'' arrangements.

In some regions of the country, state regulators or RTOs/ISOs have established ''demand side management programs'' to assist utilities in managing the supply/demand balance that is essential to delivering reliable electric energy (which is not currently storable in commercial quantities). Therefore, some NFP Electric Entities engage in joint demand-side management programs with their retail electric customers whereby the customers agree to reduce service/load requirements during certain weather or emergency conditions. NFP Electric Entities may agree with each other to engage in joint demand-side management programs to conserve their collective generation resources and reduce costs, and to comply with their collective obligations to RTOs/ISOs, regional balancing authorities, and state or local regulators.

The Petition also notes that NFP Electric Entities may provide each other with services related to the generation, transmission, and/or distribution facilities owned by each, or with respect to the maintenance (ongoing, outage, or emergency) or dispatch of generation units. Especially when there is a weather event or other unexpected outage which interrupts electric energy service to an NFP Electric Entity's customers, other NFP Electric Entities (and other electric utilities) in the geographic area will provide goods and services on an immediate basis, often without the opportunity of negotiating pricing or payment terms until the electric energy service has been restored to retail electric energy customers. These agreements between NFP Electric Entities may involve operating each other's facilities, sharing equipment, supplies and employees (*e.g.,* line crews), and interfacing on each other's behalf with suppliers/vendors, regulators and reliability authorities and customers.

7. Environmental Rights, Allowances or Attributes

The last category of transactions described in the Petition relates to a wide variety of Federal, regional, state, and local environmental rights, allowances or attributes required to operate a particular NFP Electric Entity's electric facilities or operations, or to fulfill a particular NFP Electric Entity's regulatory requirements. NFP Electric Entities may transact among themselves in environmental emissions allowances, offsets or credits (including carbon), renewable energy, distributed generation, clean energy or energy efficiency credits or attributes (which can be regional or state specific in nature, including ''green tags''). NFP Electric Entities in a particular geographic region, whose available allowances may be directly useable to fulfill the needs of another NFP Electric Entity in the same region, often will directly transact with each other, rather than go to a non-NFP Electric Entity to negotiate a particular transaction.

C. Definition and Scope of NFP Electric Entities

The Petition defines NFP Electric Entities as:

(i) The United States, a State or any political subdivision of a State, or (ii) an ''electric cooperative'' that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or [(iii) any other electric cooperative, whether or not such electric cooperative meets the requirements of clause (ii) above,][1] or (iv) any agency, authority, instrumentality or department of any one or more of the foregoing, or a federally-recognized Indian tribe, or (v) any entity which is wholly owned, directly or indirectly, by any one or more of the foregoing. For purposes of this definition, an ''electric cooperative'' shall mean an ''electric membership corporation'' or an ''electric power association'' organized under State law, a ''rural electric cooperative,'' ''cooperative providing electric services to consumers and farmers'' or any similar entity referenced in other Federal, State and local laws and regulations, so long as any such entity is formed and continues to operate for the primary purpose of providing electric service to its members on a not-for-profit, cooperative basis, and is treated as a cooperative under the Federal tax law.[39]

Generally, the Petition represents that all NFP Electric Entities are ''nonfinancial end users of Electric Operations-Related Transactions, and enter into such transactions only to hedge or mitigate commercial risks.''[40] Summarized herein, the Petition describes in detail the specific classes of entities it believes fall within its proposed NFP Electric Entity definition, and justifies inclusion of each specific class based upon a common public interest rationale.

1. FPA 201(f) Entities

''FPA 201(f) entities'' is the first class of NFP Electric Entities defined by Petitioners. These entities include i) certain government and cooperatively-owned electric utilities (as described in FPA section 201(f)) and ii) federally-recognized Indian tribes that own or operate electric facilities (as determined by FERC case law).

a. Government and Cooperatively-Owned Electric Utilities Described by FPA Section 201(f)

Petitioners seek relief from the CEA and Commission regulations there under for those entities explicitly described by FPA section 201(f)[41] as being exempt from the plenary jurisdiction of FERC. Per the Petition, the first category of these entities includes certain government-owned electric utilities, including Federal electric utilities such as BPA and other Federal agencies that operate electric generating or transmission facilities,[42]

of fueling L's and M's (and other NFP Electric Entity owners of Project Entity Z's) natural gas-fired electric generating facilities in the California ISO market. M pays L for the cost of acquiring, developing and improving the natural gas Project Entity Z through direct ''capital contributions'' to Project Entity Z. In addition M pays L a monthly fee for the natural gas supplied from the natural gas project, composed of an operating cost fee component, an interstate pipeline transportation cost fee component and an operating reserve cost fee component. The natural gas-fired electric generating facility is to be used by M to supply a portion of its expected retail electric load.

Petition Exhibit 2 at 3–4.

[39] Petition at 14 (internal citations omitted).

[40] Petition at 33. Petitioners explain that the term ''nonfinancial end users'' means an NFP Electric Entity that does not fall within the definition of a ''financial entity'' in CEA 2(h)(7)(C)(i) and that no NFP Electric Entity falls within that definition. *See id.* at 33–34.

[41] *See supra* note 19 and accompanying text.

[42] Per the Petition, there are nine Federal electric utilities in the United States, which are part of several agencies of the United States Government:

Continued

and state-chartered electric utilities such as the New York Power Authority. Other examples of government-owned electric utilities include state or county utility boards or public utility districts formed under state or local law, joint action agencies or joint power agencies formed under state law to provide wholesale power supply and transmission services to member entities (each a Joint Action Agency), and other political subdivisions of a state.[43] Finally, municipal utilities ranging in size from LPPC members such as the Los Angeles Department of Water and Power and the Sacramento Municipal Utility District, to the smallest municipal electric utilities with fewer than 500 electric meters, are also contemplated as government electric utilities under FPA section 201(f).[44]

Per the Petition, the second category of entities described by FPA section 201(f) are electric cooperatives that either are financed by the U.S. Department of Agriculture's Rural Utilities Service (''RUS''), sell less than 4,000,000 megawatt hours of electricity per year, or meet the requirements of an ''aggregated FPA 201(f) entity.'' These electric cooperatives generally consist of (i) distribution cooperatives, which distribute electric energy service directly to their owner/member customers, and (ii) G&T cooperatives, which are owned by distribution cooperatives and generate or purchase electricity and transmit it to their constituent distribution cooperatives for delivery to the distribution cooperatives' owner/member customers. Aggregated entities most commonly consist of a G&T cooperative formed by its constituent distribution cooperative (NFP Electric Entity) members or, comparably, a Joint Action Agency which is formed by its constituent government-owned (NFP Electric Entity) utility members.

As background, Petitioners explain that the FPA originally was enacted ''to remedy rampant abuses in the *investor-owned* electric utility industry''[45] but that cooperatively-owned electric utilities are easily distinguishable from investor-owned electric utilities because they are ''effectively self-regulating.''[46] More importantly, of the major abuses considered by Congress as the impetus for the FPA legislation, ''virtually none could be associated with the [electric] cooperative structure where ownership and control is vested in the consumer-owners.''[47] Based on this understanding of the legislative history, FERC's predecessor, the Federal Power Commission (''FPC''), concluded that electric cooperatives financed under the Rural Electrification Act of 1936 (''REA'')[48] were intended by Congress to be FPA 201(f) entities and exempt from the FPC's jurisdiction over ''public utilities.''[49] The FPC made such a determination in the 1960s notwithstanding the fact that, at that time, electric cooperatives were not expressly described in FPA section 201(f).[50]

b. Federally-Recognized Indian Tribes

Federally-recognized Indian tribes that own or operate electric facilities are not described by FPA section 201(f), and thus would be subject to regulation as public utilities under the FPA. The Petition notes, however, that FERC and its predecessor, the FPC, and at least one court have determined such federally-recognized Indian tribes are to be treated as entities described in FPA section 201(f).[51] To identify eligible Indian tribes, the Petition recommends that the Commission rely on determinations made by the Secretary of the Interior, periodically listed in the **Federal Register**, of Indian tribes to be recognized by the U.S. government pursuant to Section 104 of the Act of November 2, 1994.[52]

Petitioners note that FERC's determination that such Indian tribes should be treated as FPA 201(f) entities was based on the fact that, in operating such electric facilities, the Indian tribes perform government functions—the funds generated by such electric operations would be used for governmental purposes and would decrease the need for federal funding. Additionally, Indian tribes are subject to Interior Department oversight. Finally, like the other government or government-owned electric entities described in FPA section 201(f), the Indian tribes are tax exempt or ''not-for-profit'' entities.

2. Non-FPA 201(f) Electric Cooperatives

The Petition also requests relief for the very small number of cooperatively-owned electric utilities that do not meet the criteria of FPA section 201(f), either because they do not receive funding from RUS, sell more than 4,000,000 megawatt hours of electricity in a given year, or are not an ''aggregated NFP

- The Army Corps of Engineers;
- The Bureau of Indian Affairs and the Bureau of Reclamation in the Department of the Interior,
- The International Boundary and Water Commission in the Department of State,
- The Power Marketing Administrations in the Department of Energy (BPA, Western Area Power Administration, Southwestern Area Power Administration, and Southeastern Area Power Administration), and
- The Tennessee Valley Authority (TVA).

In addition, three Federal agencies operate electric generating facilities:

- TVA, the largest Federal power producer;
- The U.S. Army Corps of Engineers; and
- The U.S. Bureau of Reclamation.

[43] Per the Petition, a public power district or public utility district may be owned and operated by a city, county, state or regional agency. *See, e.g.,* Public Utility District No. 1 of Chelan County, Washington (*http://www.chelanpud.org/your-PUD.html*). An irrigation district is a utility organized under state law which generates electricity in the course of supplying water. For example, Imperial Irrigation District in California was formed in 1911 under the California Irrigation District Act, as described at *http://www.iid.com/index.aspx?page=39.* Government-owned utilities are accountable to elected and/or appointed officials and focus on providing reliable and safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

[44] Per the Petition, a government owned or operated electric utility may be a department of the governmental entity, or may be organized as a separate agency, authority or instrumentality thereof.

[45] *Salt River Project Agric. Improvement and Power District* v. *Fed. Power Comm'n,* 391 F. 2d 470, 475 (D.C. Cir. 1968) (emphasis added by Petitioners).

[46] *Id.* at 473 (elaborating that electric cooperatives are ''completely owned and controlled by their consumer-members and only consumers can become members. They are non-profit. Each member has a single vote in the affairs of the cooperative, and services are essentially limited to members. No officer receives a salary for his services[,] and officers and directors are prohibited from engaging in any transactions with the cooperative from which they can earn any profit.'') (citation omitted).

[47] *Id.* at 475.

[48] 7 U.S.C. 901 et seq. The REA established the RUS as the body to administer financing to rural utilities.

[49] *See Dairyland Power Coop. et al,* v. *Fed. Power Comm'n,* 37 F.P.C. 12, 27 (1967).

[50] As part of the Energy Policy Act of 2005 (''EPAct 2005''), Congress codified the previous interpretation by FERC in *Dairyland, id.,* (affirmed by the D.C. Circuit Court in *Salt River,* 391 F. 2d 470) that electric cooperatives that receive financing under the REA should be considered FPA 201(f) entities. At the same time, Congress also expanded the FPA 201(f) exemption to electric cooperatives that sell less than 4 million megawatt hours per year, even if those electric cooperatives do not receive any financing from the RUS. *See* Public Law 109–58, 1291, 119 Stat. 594, 985 (2005), amending FPA 201(f) ''by striking ''political subdivision of a state,'' and inserting ''political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year.''

[51] Per the Petition, *see City of Paris, KY* vs. *Fed. Power Comm'n,* 399 F.2d 983 (D.C. Cir. 1968); *Sovereign Power Inc.,* 84 FERC ¶ 61,014 (1998); *Confederated Tribes of the Warm Springs Reservation of Or., a Federally Recognized Indian Tribe, and Warm Springs Power Enterprises, a Chartered Enter. of the Confederated Tribes of the Warm Springs Reservation of Or.,* 93 FERC ¶ 61,182 at 61,599 (2000) (concluding that ''the Tribes are an instrumentality of the 'United States, a State or any political subdivision of a state''' and that Warm Springs Power Enterprises, a Chartered Enterprise of the Tribes, was entitled to Tribes' Section 201(f) exemption.).

[52] Public Law 103–454, 108 Stat. 4791, 4792 (codified at 25 U.S.C. 479a–1).

Electric Entity.'' [53] FERC has estimated that there were approximately fifteen electric cooperatives (of more than 900) which do not meet the requirements set forth in FPA section 201(f).[54] Petitioners request that the Commission recognize such cooperatives as ''appropriate persons,'' in accordance with CEA sections 4(c)(1), 4(c)(2)(B), and 4(c)(3)(K), for purposes of an exemption under CEA section 4(c)(6). Petitioners represent as a threshold matter that, regardless of whether an electric cooperative meets the specific criteria of FPA section 201(f), all cooperatively-owned electric utilities share certain distinguishing features—a common not-for-profit public service mission and self-regulating governance model—that form the underlying rationale for the FPA section 201(f) exemption.[55]

In analyzing whether an entity qualifies as an appropriate person under CEA section 4(c)(3), Petitioners note that past Commission determinations have focused on the financial strength and sophistication of the persons for whom relief is being provided. Petitioners also posit that CEA section 4(c)(3)(K) allows the Commission to consider the operations management qualification of the person or class of persons in relation to the exempted transactions, as well as the person's or class of person's ability to execute the exempted transactions without additional regulatory protection by the Commission. When considered in light of these determinative factors, Petitioners argue that source of financing or total electric energy sales are not meaningful factors for purposes of differentiating between electric cooperatives that are appropriate for an exemption from the CEA and those that are not.[56]

First, the Petition argues that whether out of necessity due to insufficient Congressional appropriations, or by choice in order to find more appropriate or less expensive terms for certain needs, electric cooperatives may look to sources of financing beyond the RUS. Other nonprofit cooperative financing entities, such as the National Rural Utilities Cooperative Finance Corporation (''CFC'') or Co-Bank,[57] exist to supplement RUS financing or provide additional financing resources and terms not available through the RUS. Petitioners note that electric cooperatives always can choose to borrow from private lenders or self-finance infrastructure investments and operations with ongoing revenues and reserves. Eligibility for RUS financing does not speak to an electric cooperative's operational soundness or financial strength.

Next, the Petition suggests that greater electric energy sales could result in greater financial strength. Petitioners note that while very few electric cooperatives historically have sold 4,000,000 megawatt hours or more in a particular year, the success of the electric cooperative model means that there may be a small number of cooperatives in any particular year whose annual sales exceed the threshold.[58] Furthermore, an electric cooperative's status under the FPA may fluctuate year-to-year depending on its annual megawatt sales, which always will fluctuate depending on usage trends, economic conditions, and weather patterns. Petitioners believe that Congress' policy decision to codify 4,000,000 megawatt hours per year as a threshold was based solely upon the fact that FERC, as well as other agencies, already used this level to identify ''small utilities,'' ''small entities,'' or ''small businesses'' that should be afforded protection from the costs and regulatory burdens imposed on larger entities.[59]

[53] *See* Petition at 23. The Petitioners note that under various state laws, cooperatively owned electric utilities, or electric cooperatives, are sometimes called ''electric membership corporations'' or ''electric power associations.'' In addition, Petitioners note that under certain sections of tax laws, state public utility laws or regulations, the FPA or the FERC's regulations, electric cooperatives are sometimes called ''rural electric cooperatives'' or ''cooperatives providing electric services to consumers and farmers,'' or by similar, but not identical, entity names. *See* Petition at 2, note 5. In this Notice, as the Petitioners did in their Petition, the Commission uses the term ''electric cooperatives'' to encompass all of these entities, which are formed for the primary purpose of providing electric energy service to their owners/member customers on a not-for-profit basis, and which are treated as cooperatives under Federal tax laws.

[54] *Statement of Cynthia A. Marlette, General Counsel of FERC, before the Committee on Agriculture, Subcommittee on Conservation, Credit, Energy, and Research, United States House of Representatives* (July 30, 2008) (available at *http://www.ferc.gov/eventcalendar/Files/20080730104611-Marlette.pdf*). NRECA believes that, of its current members, the following six entities are non-FPA 201(f) electric cooperatives: Pacific Northwest Generating Cooperative (PNGC Power), Golden Spread Electric Cooperative, Old Dominion Electric Cooperative, Wabash Valley Power Association, Wolverine Power Cooperative, and Deseret Power Electric Cooperative.

[55] Similarly, to be treated as a ''cooperative'' under Federal tax law, regardless of 201(f) status, an electric cooperative must operate on a cooperative basis. *See* 26 U.S.C. 501(c)(12), 1381(a)(2)(C). As explained by the United States Tax Court in the seminal case of *Puget Sound Plywood, Inc.* v. *Commissioner of Internal Revenue,* operating on a cooperative basis means operating according to the cooperative principles of i) democratic member control, ii) operation at cost, and iii) subordination of capital. *See* 44 T.C. 305 (1965); *see* also Internal Revenue Manual § 4.76.20.4 (2006) (elaborating on the cooperative principles by explaining that each member of a cooperative has one vote, a cooperative must allocate any excess operating revenue to its members in proportion to the amount of business it did with each, and that members share their interest, risk, and burden to obtain services or benefits rather than invest as equity owners). Additionally, for any electric cooperative to be exempt from Federal income taxation pursuant to IRC 501(c)(12), it must collect annually ''85 percent or more of [its] income * * * from members for the sole purpose of meeting losses and expenses.'' 26 U.S.C. 501(c)(12)(A). Accordingly, Petitioners argue that an electric cooperative, regardless of FPA section 201(f) status, lacks incentive or motivation to manipulate prices, disrupt market integrity, engage in fraudulent or abusive sales practices, or misuse customer assets because it: (1) Is a consumer cooperative; (2) is controlled by its members; (3) must operate at cost and ''not operate either for profit or below cost;'' (4) may not benefit its individual members financially; and (5) if exempt from Federal income taxation, must collect at least 85 percent of its income from members.

[56] Petitioners argue that in promulgating CEA section 4(c)(6)(C), ''Congress effectively makes the determination for the Commission that 'entities described in FPA 201(f)' are 'appropriate persons' entitled to the benefits of the exemptive order.'' Petition at 23. Thus, by extension, Petitioners argue that if non-FPA 201(f) electric cooperatives are at least as financially sound and operationally capable as those electric cooperatives described by FPA section 201(f), then they should also be considered appropriate persons.

[57] Per the Petition, the CFC is a nonprofit cooperative entity formed in 1969 by NRECA's electric cooperative members. CFC provides access to financing to supplement the loan programs of the RUS. CFC is the largest non-governmental lender to America's rural electric systems, and nearly 200 electric cooperatives across the United States rely solely on CFC for financing. CFC has separately requested exemptive relief from the Commission for the swaps it enters into related to providing financing to its members' electric cooperatives. CoBank is a cooperative bank owned by electric cooperatives and agricultural cooperatives, and is a part of the Farm Credit Administration system.

[58] Per the Petition's representation of data collected by NRECA, fewer than one percent of distribution cooperatives exceed the four million MWh annual sales threshold, as do approximately 24 of 66 G&T cooperatives. The Commission understands that of those G&T cooperatives that exceed the sales threshold in a given year, the majority are still FPA 201(f) entities because they receive financing from RUS.

[59] *See* Petition at 35–36. Counsel for Petitioners also represent that EPAct 2005 was largely a response to the electrical blackouts in the northeast United States during 2003 that later were found to be attributable to generation and transmission failures of the largest electric utility providers. Thus, Congress' chief concern in expanding the 201(f) exemption for electric cooperatives was ensuring that entities with substantial generation and transmission capacity remained subject to the plenary jurisdiction of FERC. Per the Petition, Congress did not make a policy decision that the electric cooperatives selling 4 million megawatt hours or more per year required regulation under FPA 201(f) and, where EPAct 2005 did give FERC additional discretionary jurisdiction over electric cooperatives, FERC has not chosen to exercise that discretionary authority to date. When FERC exercises its jurisdiction in certain instances, it allows non-FPA 201(f) electric cooperatives additional regulatory flexibility, subject to ''self-regulation'' by such cooperatives' member/owner boards, distinguishing the not-for-profit electric sector from investor-owned electric utilities. The very small number of electric cooperatives that do not meet the 4 million megawatts per year threshold at any point in time are, nonetheless, ''self-

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Thus, Petitioners argue that there is no implication under any of the FPA section 201(f) criteria for electric cooperatives that non-201(f) electric cooperatives are more or less creditworthy or financially sound, or more or less deserving of operational deference or regulatory preference, than electric cooperatives that meet one of the FPA section 201(f) criteria.[60]

III. Commission Determinations

A. Scope of the Proposed Order

In the exemptive order proposed herein (the ''Proposed Order''),[61] the Commission is providing for a narrower scope of eligibility than requested by Petitioners. While the proposed exemptive relief is structured in a manner similar to the Petition's suggested approach and incorporates many of the same parameters,[62] the Proposed Order uses different terminology to describe the pertinent categories of affected entities and transactions, and limits the exempted transactions to certain enumerated categories.[63] The Proposed Order identifies (i) the entities eligible to rely on the exemption for purpose of entering into an exempt transaction (''Exempt Entities''); (ii) the agreement, contract, or transaction for which the exemption may be relied upon (''Exempt Non-Financial Energy Transactions''); and (iii) the provisions of the CEA that will continue to apply to Exempt Entities engaging in Exempt Non-Financial Energy Transactions. Accordingly, relief from the requirements of the CEA and Commission regulations provided in the Proposed Order will be available for only an Exempt Entity entering into an Exempt Non-Financial Energy Transaction with another Exempt Entity, subject to certain conditions.

1. Exempt Entities

The Commission is proposing to include three general categories of electric utilities as Exempt Entities in the relief provided herein: (i) Government-owned electric utilities described by FPA section 201(f); (ii) electric utilities owned by Federally-recognized Indian tribes, otherwise subject to regulation as public utilities under the FPA; and (iii) cooperatively-owned electric utilities, regardless of whether such utilities are described by FPA section 201(f), so long as they are treated as cooperative organizations under the Internal Revenue Code (''IRC'').[64] Given the unique public service mission and governance structure of government, Indian tribe, and cooperatively-owned electric utilities (as compared to investor-owned public utilities), the Commission believes that such Exempt Entities, when engaged in Exempt Non-Financial Energy Transactions, have less financial incentive to engage in market manipulation or other types of abusive trade practices that may implicate the public interest and/or purposes of the CEA and therefore are appropriate for section 4(c) relief.[65]

Generally, Exempt Entities are limited to nonfinancial commercial end users that operate on a not-for-profit basis. The Proposed Order defines Exempt Entities as those entities that do not meet the definition of a ''financial entity'' in CEA section 2(h)(7)(C). The purpose of this criterion is to prevent a cooperative that exists primarily in order to provide financing for its members, and thus enters into a significant number of derivative transactions to hedge financial price risks, such as movements in interest rates, from benefiting from the relief provided in the Proposed Order.[66]

a. Electric Utilities Owned by Federal, State, or Local Government

Pursuant to the mandate in CEA section 4(c)(6)(C) and subject to the determinations described in Section III.B below, the Commission is proposing to include as Exempt Entities in its Proposed Order all government-owned electric utilities that are described by FPA section 201(f). FPA section 201(f) exempts from the plenary jurisdiction of FERC ''any agency, authority, or instrumentality of'' or ''any corporation which is wholly owned, directly or indirectly, by'' the federal government or a state or local government. These entities include, but are not limited to, all federal agency-owned electric generation and

regulating entities,'' share the same cooperative governance structure, operate on a cooperative basis and are not-for-profit entities.

[60] Petitioners note that non-FPA 201(f) electric cooperatives likely own more or larger generation and transmission assets, and therefore are arguably at least as financially sound and operationally qualified as electric cooperatives described in FPA section 201(f). Furthermore, these non-FPA 201(f) electric cooperatives may meet the financial criteria established in CEA section 4(c)(3)(F) for an ''appropriate person'' by having a net worth exceeding $1,000,000 or total assets exceeding $5,000,000.

[61] The text of the Proposed Order is set forth in section IV of this Notice.

[62] *See* Petition Exhibit 3.

[63] The Commission believes that the open-ended relief sought by the Petitioners makes it difficult to evaluate the full range of transactions that would be subject to exemption and, thus, to conduct legitimate public interest and CEA purpose determinations as required under CEA section 4(c). As the Commission is not providing the categorical relief requested by Petitioners at this time, it considered the Petition's secondary requests to provide i) an additional category for ''trade options'' and/or ii) delegated authority to Commission staff to review and approve new categories of exempted transactions for purposes of being eligible for the relief provided herein. *See supra* note 26. Given Congressional intent that the Commission need not determine the nature of a product when providing 4(c) relief, the Commission does not believe it would be appropriate to provide specific relief to trade options as a category of transactions in the context of this proposed relief. *See supra* note 7 and accompanying text. While it is possible that the scope of the transactions eligible for the relief proposed herein may include transactions that otherwise would qualify as trade options, the Commission need not make such a finding in the context of the proposed 4(c) exemption. Rather, the Commission has determined to limit the scope of the proposed exemption to Exempt Non-Financial Energy Transactions, as described in the Proposed Order, and the Commission is requesting comment on this description. As for the Petitioner's request regarding delegated authority to CFTC staff, the Commission has never in the past delegated authority to staff to make ad-hoc 4(c) determinations, and does not propose such a delegation herein. Additionally, the Commission is not providing relief retroactive to the enactment of Dodd-Frank, as requested by Petitioners. The Commission specifically requests comment as to whether it should provide such relief, and as to whether such relief would be necessary to provide any relief beyond that which has already been available via the Commission's Dodd-Frank implementation program, related exemptive orders, and staff no-action letters. The Commission also declines to propose, as was requested by Petitioners, that the transactions subject to the relief provided herein will not affect any entity's regulatory status under the CEA and Commission regulations. The Commission requests comment as to how the relief provided by the Proposed Order would be incomplete without such a provision and as to whether the Commission should include such a provision in the final exemptive order.

[64] The Proposed Order also includes as an Exempt Entity any not-for-profit entity that is wholly owned, directly or indirectly, by any one or more of the entities included within the three general categories above.

[65] The potential for manipulation described here differs from the situation in *CFTC* v. *Dairy Farmers of America*. In this case, a dairy cooperative was able to have a direct effect on a small illiquid spot cheese market that was a pricing component in the U.S. Department of Agriculture formula used to calculate milk prices under the Federal Milk Marketing Orders in an attempt to manipulate the price of Class III milk futures. The electric energy market situation is different because Exempt Entities do not report prices of Exempt Non-Financial Energy Transactions to indexes used to settle other derivative products that could benefit an Exempt Entity cooperative's members.

[66] The Commission also is proposing, in a separate 4(c) order, to extend the end-user exception found in CEA section 2(h)(7) to cooperatives that are financial entities as defined in CEA section 2(h)(7)(C) (''Financial Cooperative 4(c) Order). The purpose of this 4(c) relief is to extend the benefits of the end-user exception to cooperatives that meet the definition of a financial entity, but whose members otherwise would qualify for the end-user exception but choose to take advantage of the cooperative's low-cost access to financing. *See* 77 FR 41940 (July 17, 2012). The Commission notes, however, that for the policy reasons described herein as well as in the Financial Cooperative 4(c) Order, the extension of the end-user exception to financial cooperatives still requires reporting of swap transactions, whereas the relief provided in this Proposed Order does not.

transmission facilities,[67] state-chartered electric utilities,[68] utility boards or public utility districts formed under state or local law,[69] and joint action or joint power agencies formed under state law to provide wholesale power supply and transmission services to member entities.[70]

b. Electric Utilities Owned by an Indian Tribe

Based on the determinations described in Section III.B below and pursuant to CEA section 4(c)(1), the Commission is proposing to include as Exempt Entities in its Proposed Order all electric facilities owned by federally-recognized Indian tribes that otherwise would be subject to FERC's plenary jurisdiction. For purposes of the Proposed Order, ''federally-recognized'' means that the Indian tribe has been documented by the Secretary of the Interior in the **Federal Register** as having been recognized by the U.S. government, pursuant to section 104 of the Act of November 2, 1994.[71]

The Commission has determined that electric utilities owned by federally-recognized Indian tribes are no different substantively than government-owned electric utilities described immediately above for purposes of benefiting from the relief provided in the Proposed Order. Like government-owned electric utilities, electric utilities owned by a federally-recognized Indian tribe use funds generated from electric energy sales for purposes of running a tribal government. That is, instead of accruing profits for the benefit of private investors or shareholders, any excess operating revenues related to the generation or transmission of electricity are used by the Indian tribe to support the tribal governing body and reduce dependence on federal funding. Additionally, Indian tribes are tax-exempt or not-for-profit entities. Finally, the Commission notes that for many of the same reasons just noted, FERC has interpreted ''instrumentalities'' of government to include federally-recognized Indian tribes, thus treating electric facilities owned by these Indian tribes as FPA section 201(f) entities.[72]

c. Electric Utilities Owned as Cooperative Organizations

Pursuant to CEA section 4(c)(6)(C), and subject to the determinations described in Section III.B below, the Commission is proposing to include as Exempt Entities in its Proposed Order all cooperatively-owned electric utilities that are described by FPA section 201(f).[73] Additionally, pursuant to the exemptive authority provided in CEA section 4(c)(1) and subject to the determination described in Section III.B below, the Commission is proposing to include as Exempt Entities all other electric cooperatives that are not described by FPA section 201(f).[74] By reference to the IRC in the Proposed Order, an ''electric cooperative'' means a non-profit or not-for-profit entity that is organized and continues to operate primarily to provide its members with electric energy services at the lowest cost possible and is taxed as an electric cooperative pursuant to IRC section 501(c)(12) or 1381(a)(2)(C).[75] In order for an electric utility to be taxed as a cooperative, the electric utility must demonstrate that it operates in accordance with three principles: (i) Democratic member control; (ii) operation at cost (*i.e.,* allocating any excess revenue, less cost of producing the revenue, among members in proportion to the amount of business done with each); and (iii) subordination of capital (*i.e.,* no single contributor of capital to the cooperative can control the operations or receive most of the pecuniary benefits of operations, setting a cooperative apart from an investor).[76]

Exempt Entity electric cooperatives generally conform to one of two structures. First, a G&T cooperative generates or purchases and transmits electric energy at wholesale prices to its constituent distribution cooperatives, which are members/owners.[77] Second, a distribution cooperative sells electric energy to member/owner retail customers.[78] Both structures are consumer cooperatives, meaning that they were formed by consumers for the ''benefit of [such] members in their capacity as consumers.''[79] As noted above, Exempt Entities do not include cooperatives that qualify as financial entities pursuant to CEA section 2(h)(7)(C), regardless of whether they are recognized as FPA section 201(f) entities.[80]

2. Exempt Non-Financial Energy Transactions

The Proposed Order defines Exempt Non-Financial Energy Transactions as those agreements, contracts, or transactions entered into between Exempt Entities primarily in order ''to satisfy existing or anticipated contractual obligations to facilitate the generation, transmission, and/or delivery of electric energy service to customers at the lowest cost possible, and the agreement, contract, or transaction is intended for making or taking physical delivery of the commodity upon which the agreement, contract, or transaction is based.''[81]

[67] *See supra* note 42.

[68] These utilities include, but are not limited to, entities such as the New York Power Authority.

[69] These utilities include, but are not limited to, municipal electric utilities, regardless of size.

[70] These utilities include government-owned public power and public utility districts such as an irrigation district organized under state law that generates electric energy during the course of supplying water.

[71] Public Law 103–454, 108 Stat. 4791, 4792, as codified at 25 U.S.C. 479a–1.

[72] *See supra* note 51.

[73] FPA section 201(f) exempts from the plenary jurisdiction of FERC any electric cooperative that either is funded by the RUS, sells less than 4,000,000 megawatt hours per year of electricity, or qualifies as an aggregated FPA 201(f) entity. An aggregated FPA 201(f) entity consists of ''any corporation which is wholly owned, directly or indirectly, by any one or more [FPA 201(f) entity].'' These entities include Joint Action Agencies that are formed by constituent government-owned electric utilities described by FPA section 201(f).

[74] *See infra* Section III.B.4 for the Commission's analysis of why non-201(f) electric cooperatives are deemed to be appropriate persons for purposes of CEA section 4(c)(1) relief.

[75] 26 U.S.C. 501(c)(12), 1381(a)(2)(C). For purposes of the definition, the term ''electric cooperative'' includes a ''rural electric cooperative.'' The Commission understands that while not required for federal income tax status, many electric cooperatives are organized under state cooperative statutes as well. To the extent such laws impose requirements that conflict with those in IRC 501(c)(12), state law governs without jeopardizing 501(c)(12) status. *See* Internal Revenue Manual § 4.76.20.8 (2006).

[76] The term ''cooperative'' is not defined in IRC 501(c)(12) or 1381(a)(2)(C). Rather, common law has interpreted operation on a cooperative basis to mean the organization demonstrates the three principles noted above. *See Puget Sound Plywood* v. *Commissioner,* 44 T.C. 305, 307–308 (1965). Electric cooperatives receive tax-exempt status if they meet the additional criteria of receiving at least 85 percent of revenue from their members for the sole purpose of meeting losses and expenses. *See* IRC 501(c)(12)(A). Otherwise, electric cooperatives are subject to federal income tax. *See* IRC 1381(a)(2)(C); Rev. Rul. 83–135.

[77] G&T cooperatives may also transmit electric energy to other G&T cooperatives that are members based on ''generation capacity'' agreements as described by Petitioners. *See supra* Section II.B.2.

[78] Retail customers, in turn, use the electric energy to power everyday activities, whether commercial or residential in nature.

[79] *See Puget Sound Plywood,* 44 T.C. at 306. Alternatively, producer cooperatives, such as large farming cooperatives, exist for the ''benefit of the members in their capacity as producers.'' *See id.* The Commission notes that the public interest rationale for exempting consumer electric cooperatives articulated herein would not necessarily apply to other producer cooperatives, given differences in operational purposes and motivations behind forming such cooperatives.

[80] Additionally, financial cooperatives are not tax-exempt entities pursuant to IRC 501(c)(12). *See* Internal Revenue Manual § 4.76.20.5 (2006). The Commission intends for financial cooperatives that finance electric cooperatives, such as the CFC, to rely on the exemptive relief provided in the recently-proposed financial cooperative 4(c) order. *See supra* note 66.

[81] The Petition asserts that the purpose of *all* transactions for which relief is sought (as described therein) must be '' 'to hedge or mitigate commercial

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Exempt Non-Financial Energy Transactions are limited to six categories of agreements, contracts, or transactions, as described in further detail in the Proposed Order,[82] which facilitate: (i) The generation of electric energy by an Exempt Entity, including fuel supply; (ii) the purchase or sale and transmission of electric energy by/to an Exempt Entity; and (iii) compliance with electric system reliability obligations applicable to the Exempt Entity and its facilities or operations.

When combined with the requirements for Exempt Entities described above, the Commission believes that Exempt Non-Financial Energy Transactions, as defined under the Proposed Order, will not be used for speculative purposes. That is, Exempt Entity counterparties to Exempt Non-Financial Energy Transactions must contemplate ''delivery'' of the underlying good or service at the time they enter into the agreement, contract, or transaction, whether that be for electric energy, generation capacity, access to transmission lines, fuel, or some combination of the foregoing.[83] Furthermore, these transactions generally are not used by Exempt Entities for the primary purpose of hedging fluctuations in the price of electric energy or any other commodity related to the generation, transmission, and/or delivery of electric energy to customers.[84] Finally, the majority of Exempt Non-Financial Energy Transactions are not suitable for trading on an exchange such as a registered DCM or SEF due to their highly bespoke nature, and cannot include transactions based on, derived from, or referencing any financial commodity or any metal, agricultural, crude oil or gasoline commodity that cannot be used as fuel to generate electric energy. For these reasons, and for the reasons discussed in the 4(c) analysis provided in Section III.B below, the Commission believes that these transactions are unlikely to have an impact on price discovery or the functioning of markets regulated by the Commission, and thus are appropriate for conditional relief from the requirements of the CEA and regulations thereunder, pursuant to CEA section 4(c).

The unique nature of the electric energy industry, including the unique nature of the not-for-profit utility structure, influenced the Commission's choice of the transactions within the scope of the exemption in the Proposed Order. Supply of reliable, affordable electric energy has long been constrained by a limited amount of generation and transmission capacity, particularly in rural regions, that is capable of meeting peak demand. Unlike many physical commodities, electric energy is not capable of being purchased in large commercial quantities ahead of time, delivered, and stored for later consumption or use. That is, electric energy must be used or consumed on an as-needed basis.

Demand, on the other hand, can be subject to unpredictable fluctuations due to emergency situations and changes in weather patterns, usage trends, and larger macroeconomic conditions. Thus, electric utilities, including Exempt Entities, negotiate highly customized commercial arrangements in order to fulfill these constantly fluctuating retail electric energy needs while still complying with national and regional environmental and reliability standards. Each category of Exempt Non-Financial Energy Transactions described in the Proposed Order represents a component of these larger bespoke commercial transactions used to fulfill an Exempt Entity's public service mission.[85]

The Commission notes that not every transaction described by the Petition is being included in the Commission's definition of Exempt Non-Financial Energy Transaction. Due to the Commission's recent joint final rule and interpretation with the SEC in which it further defined what is (and is not) a swap (''Products Release''),[86] the Commission believes it would not be appropriate to provide 4(c) relief from the requirements of the CEA and Commission regulations thereunder for certain transactions that are not swaps.[87]

Specifically, the Commission notes that, consistent with an example provided in the Products Release, the example of a Fuel Delivered transaction provided in Exhibit B of the Petition would be covered by the forward exclusion from the swap definition.[88] Additionally, the Commission notes that, consistent with the general description provided in the Products Release, agreements, contracts, and transactions involving the category of Environmental Rights, Allowances or Attributes as specifically described by the Petition are covered by the forward exclusion from the swap definition.[89] Accordingly, while these agreements, contracts, and transactions are not covered by the relief in the Proposed Order, they nonetheless are not subject to the requirements of the CEA and Commission regulations thereunder otherwise applicable to swaps, such as

risks' (as such phrase is used in CEA Section 2(h)(7)(A)(ii)).'' *See* Petition at 4. The Commission believes, however, that based on the general descriptions and accompanying examples of Electric Operations-Related Transactions provided in Petition, some types of transactions may not be agreements, contracts, or transactions that the Commission traditionally has viewed to ''hedge or mitigate commercial risk'' as such phrase is used in CEA section 2(h)(7)(A)(ii). Due to the breadth and vagueness of some of the Petition's descriptions, it is unpractical for the Commission to identify every manifestation of an Electric Operations-Related Transaction that does not come within the Commission's jurisdiction, although it has attempted to do so to the extent that the Commission has already made an affirmative determination elsewhere as to the nature of a product described in the Petition. *See infra* notes 86–90 and accompanying text. In any case, in order to provide Exempt Entities with regulatory certainty pursuant to CEA section 4(c), the Commission is defining Exempt Non-Financial Energy Transactions to include all agreements, contracts, or transactions entered into for the primary purpose of satisfying existing or anticipated contractual obligations to fulfill an Exempt Entity's public service mission that are intended for making or taking physical delivery of the underlying commodity. The Commission is seeking comments on the merits to this approach in defining Exempt Non-Financial Energy Transactions.

[82] The descriptions of the categories of exempted transactions in the Proposed Order are based on the Commission's understanding of the transaction types as commonly known to the electric industry, as informed by the descriptions provided in the Petition and the Commission's past experience in these markets. While the categories are identified with the same terminology used in the Petition, the Commission notes that these categories are not described in identical terms and therefore do not necessarily describe the same scope of transactions as contemplated in the Petition for exemption. The Commission understands that many of the terms used to identify categories of transactions in the Petition are terms of art, commonly understood by the electric energy industry (including by Exempt Entities).

[83] Although some agreements may be settled through a book-out transaction, the transaction may never be entered into for speculative purposes.

[84] A key component of bona fide hedging, as defined in the Commission's regulations, is reducing the risk of fluctuations in price. In contrast, Exempt Non-Financial Energy Transactions primarily are used for making or taking delivery of electric energy in the physical marketing channel.

[85] Each category represents a factor in the ultimate price paid by retail customers for electric energy. For example, ''generation capacity'' transactions represent the cost component of acquiring and maintaining the generation assets used to produce the electric energy. ''Electric energy delivered'' represents the actual cost of using the generation assets to produce the electric energy.

[86] 77 FR 48208 (August 13, 2012).

[87] The Commission has determined to interpret the forward exclusion from the swap definition consistently with the forward exclusion from the ''future delivery'' definition. *Id.* at 48227. Therefore, the forward exclusion from the swap definition applies equally to the forward exclusion from the ''future delivery'' definition. *See id.* at 48233, note 271.

[88] *Compare* Petition Exhibit 2 at 3 *with* 77 FR 48236.

[89] *Compare* Petition at 12 and Petition Exhibit 2 at 6 *with* 77 FR 48233–234.

clearing, trade execution, and reporting.[90]

Finally, the descriptions of the categories of Exempt Non-Financial Energy Transactions in the Proposed Order do not constitute official Commission determinations as to those transactions' legal status as a product subject to the jurisdiction of the CEA.[91] To the extent overlap exists between transactions described as being subject to the forward exclusion from the swaps definition in the Products Release and transactions described by the categories of Exempt Non-Financial Energy Transactions in the Proposed Order, the Commission is requesting public comment as to whether the Proposed Order should provide relief for such transactions.

3. Conditions

Under the Proposed Order, Exempt Entities would remain subject to certain conditions. First, the Commission's general anti-fraud, anti-manipulation, and enforcement authority found in CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13, and Commission rules 32.4 and Part 180, which have application to both derivative and cash market transactions, will still apply. This condition will allow the Commission to initiate enforcement proceedings against Exempt Entities found to be engaged in manipulative, fraudulent, or otherwise abusive trading schemes when executing Exempt Non-Financial Energy Transactions with other Exempt Entities. Additionally, the Commission reserves its authority to inspect the books and records of Exempt Non-Financial Energy Transactions already kept in the normal course of business pursuant to the Commission's regulatory inspection authorities, in the event that circumstances warrant the need to gain greater visibility with respect to Exempt Non-Financial Energy Transactions as they relate to Exempt Entities' overall market positions and to ensure compliance with the terms of the Proposed Order.

B. CEA Section 4(c) Considerations

The Commission is issuing the Proposed Order pursuant to authority found in CEA sections 4(c)(1) and 4(c)(6), among other reasons, because it believes that the proposed exemption will promote responsible economic or financial innovation and fair competition. In addition to criteria found in those provisions, both sources of exemptive relief require the Commission to make certain determinations based on criteria found in section 4(c)(2), as well.[92] Accordingly, the Commission considers and proposes to determine that: (i) CEA section 4(a) should not apply to the transactions eligible for the proposed exemption (as transacted by the entities eligible for the proposed exemption), (ii) providing section 4(c) relief from the CEA for Exempt Non-Financial Energy Transactions (as entered into between Exempt Entities) is consistent with the public interest and the purposes of the CEA, (iii) Exempt Entities are ''appropriate persons'' within the meaning of the term as defined in CEA section 4(c)(3), and (iv) the proposed exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

1. Responsible Economic or Financial Innovation and Fair Competition

The Commission believes that the exemption provided in the Proposed Order will promote financial innovation in electric energy markets facilitated by government and cooperatively-owned utilities. Government and cooperatively-owned electric utilities are not-for-profit entities whose sole purpose and mission is ''to provide reliable electric energy to retail electric customers every hour of the day and every season of the year, keeping costs low and supply predictable, while practicing cost-effective environmental stewardship.''[93] The consumer-as-owner cooperative model of electric utility, in partnership with municipal utilities and federal power agencies, has proven to be well-suited in developing innovative solutions to a complex array of issues related to extending electric energy generation and transmission resources into geographic areas of the United States where economies of scale do not exist, particularly those rural areas where traditional investor-owned utilities have chosen not to invest.[94] In order to meet these electric energy challenges, however, the Exempt Entity business model has depended on a flexible operating environment, facilitated over time by other regulatory relief such as the exemption from FERC's plenary jurisdiction provided by FPA section 201(f).

Due to factors largely beyond the control of Exempt Entities, the production, distribution, and usage needs of each Exempt Entity are constantly changing and have the potential to create the substantial commercial risk of not having enough generation, transmission, or distribution capacity for Exempt Entities to meet peak demand. Normally without the benefit of size and customer density, Petitioners contend that Exempt Entities have evolved to rely largely on each other in order to fulfill their public service mission of providing electric energy to their member-owners and retail customers at the lowest cost possible.[95] The transactions listed in the Proposed Order reflect this type of innovation. Going forward, due to the limitations of standardized derivative contracts in providing the same type of highly customized resources to unique energy needs, it is important that Exempt Entities continue to have the flexibility to negotiate innovative new arrangements bilaterally for the purpose of achieving their mission.

Additionally, the Commission notes that, under current Commission regulations and guidance, it is unclear whether all Exempt Entities would qualify as eligible contract participants (''ECPs''), as such term is defined under CEA section 1a(18).[96] Therefore, absent

[90] However, any agreement, contract, or transaction that is a swap referencing one of these agreements, contracts, and transactions may be subject to the jurisdiction of the CEA (*e.g.,* an option or other swap on or related to the price of an environmental allowance).

[91] As noted above, CEA section 4(c) does not compel the Commission to make such a determination prior to issuing 4(c) relief. *See supra* note 7 and accompanying text. In contrast, and in addition to providing *per se* determinations as to the product classification of certain transactions, the Products Release provides interpretive guidance as to how the Commission would analyze certain categories of transactions for purposes of determining whether a particular transaction is a swap. Accordingly, certain transactions covered by the categories of Exempt Non-Financial Energy Transactions in the Proposed Order may not be swaps. *See, e.g.,* 77 FR 48238 (noting that the Commission will interpret a ''full requirements'' contract with embedded volumetric optionality as a forward and not an option if the contract exhibits the features described in the Products Release in section II.B.2.(b)(ii)).

[92] The Commission interprets the phrase, ''the Commission shall, in accordance with [CEA section 4(c)(1) and 4(c)(2)], exempt from the requirements of [the CEA] * * *,'' to mean that the Commission must make the determinations required under CEA sections 4(c)(1) and 4(c)(2) prior to providing the mandated relief.

[93] Petition at 22.

[94] For instance, investor-owned, private utilities lacked a profit incentive early on to invest the vast sums of capital necessary to expand electric energy service into rural areas where the requisite infrastructure was not already in place. With support from the RUS, as established under the FPA, electric cooperatives were first established in order to serve these rural communities.

[95] For example, many G&T cooperatives are formed exclusively by distribution cooperatives for the purpose of providing each distribution cooperative with its full requirements.

[96] 7 U.S.C. 1a(18). In a recent final interpretive rule further defining entities under the CEA, as amended by the Dodd-Frank Act (''Entities Release''), the Commission declined to recognize certain entities such as not-for-profit natural gas

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relief such as that proposed herein, there is a risk that some Exempt Non-Financial Energy Transactions meeting the definition of a swap that involve non-ECP counterparties could not be traded away from a designated contract market.[97] As described elsewhere in this release, Exempt Entities engage in Exempt Non-Financial Energy Transactions with one another on only a bilateral basis because such transactions are not replicable on an exchange (whether due to transaction size, customized terms, or other reasons). Therefore, the Commission is proposing the exemption in the Proposed Order to ensure that Exempt Entities have the regulatory certainty necessary to continue negotiating highly customized, physically-settled agreements, contracts, and transactions that serve their unique public service mission of providing reliable, affordable electric energy to customers.

The Commission also believes that the relief provided in the Proposed Order will not distort the competitive landscape. First, the transactions covered by the Proposed Order relate, in many instances, to longstanding and exclusive agreements between Exempt Entities. As such, the Commission does not believe that granting an exemption from the requirements of the CEA either would change the nature of these transactions, or cause an Exempt Entity to enter into an arrangement with another Exempt Entity instead of an investor owned utility or some other counterparty solely because the agreement would be covered by the exemption in the Proposed Order. The benefits of the relief provided in the Proposed Order to government utilities and electric cooperatives will maintain the current competitive landscape, thus permitting Exempt Entities to continue using Exempt Non-Financial Energy Transactions to fulfill their public service mission, as opposed to providing an unfair advantage to one group over another group.[98]

The CFTC is requesting comment on whether the Proposed Order may foster both financial or economic innovation and fair competition.

2. Applicability of CEA Section 4(a)

The Commission does not believe that CEA section 4(a), the exchange-trading requirement for futures contracts, should apply to Exempt Non-Financial Energy Transactions as defined in the Proposed Order. When transacted between Exempt Entities, these transactions are highly negotiated and bespoke in nature, cater specifically to the Exempt Entities' respective electricity, fuel, or other needs, and are intrinsically related to the Exempt Entities' public-service mission. Accordingly, the Commission does not view Exempt Non-Financial Energy Transactions as being suitable for on-exchange trading, in large part because, as noted above, these transactions and markets are unlikely to have an impact on price discovery or the functioning of markets regulated by the Commission. Thus, CEA section 4(a) should not apply.

3. Public Interest and the Purposes of the CEA

Exempting certain physical transactions between entities described in FPA section 201(f), and certain other electric cooperatives, from the provisions of the CEA and the regulations there under, subject to certain anti-fraud, anti-manipulation, and recordkeeping conditions, is consistent with public interest and the purposes of the CEA for the reasons discussed below.

a. Public Interest

CEA section 3(a) describes Congress' findings as to certain national public interests facilitated by transactions subject to the Act. These public interests include ''providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.'' [99]

Given the unique nature of each Exempt Non-Financial Energy Transaction conducted between Exempt Entities, such transactions are generally non-fungible and therefore cannot be traded as standardized products on an exchange. Accordingly, the universe of Exempt Non-Financial Energy Transactions generally occurs between Exempt Entities, thus constituting a mostly closed-loop of bilateral transactions. These bilateral transactions do not, by and large, face markets in which non-Exempt Entities such as investor-owned utilities engage in similar transactions, and therefore pose little (if any) threat of negatively affecting the liquidity, fairness, or financial security of trading derivative products on a registered designated contract market or swap execution facility in a material way.

Exempt Non-Financial Energy Transactions, as they are defined and conditioned in the Proposed Order, are not susceptible to being used as a means for ''assuming price risk,'' or speculative activity. Rather, Exempt Entities may engage in these transactions for purposes of ''managing'' commercial risks that arise from electric operations in which the Exempt Entity engages to fulfill its public service mission of providing the most affordable and reliable electric energy possible to its members. Most of these commercial risks, however, are not directly related to fluctuations in the price of a commodity. Rather, Exempt Entities' main concern is a possible inability to satisfy contractual obligations to supply electric energy service to customers, which may arise from somewhat unpredictable fluctuations in demand for electric energy. These fluctuations, in turn, make it difficult for Exempt Entities to forecast their exact needs for generation and transmission capacity, the exact amount of fuel to be used for the generation of electric energy, and related activities necessary to facilitate the Exempt Entity's public service mission. Exempt Non-Financial Energy Transactions generally use variable pricing, as opposed to fixed pricing, meaning that they are entered into primarily to ensure that Exempt Entities are able to meet their production, transmission, and/or distribution obligations, as opposed to serving a traditional hedging function against the risk of price fluctuations of electricity or some other commodity.

It is unlikely that an exchange could or would model a standardized derivative contract to duplicate the highly-customized economic terms of a bilaterally-negotiated Exempt Non-Financial Energy Transaction. Accordingly, such transactions between Exempt Entities are not susceptible to serving a price discovery function for any broader market or markets. A market participant seeking pricing information for a product or transaction involving the same underlying commodity would look to a standardized product or contract traded

utilities as having per se ECP status. *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30657 (May 23, 2012). The Commission noted that it was, however, considering granting relief to FPA section 201(f) entities, pursuant to new authority under CEA section 4(c)(6), which ''[might] address the concerns of some commenters'' such as entities similarly situated to the utilities represented by Petitioners. *See id.* The relief provided in the Proposed Order is consistent with the Commission's Entities Release.

[97] *See* CEA section 2(e).

[98] The Commission notes that certain non-Exempt Entity electric utilities also may qualify for the end-user exception from the clearing and trade execution requirements for swaps under CEA section 2(h)(7) when engaged in bona fide hedging transactions. *See* 7 U.S.C. 2(h)(7)–(8).

[99] CEA 3(a), 7 U.S.C. 5(a).

on a regulated exchange involving that commodity.[100]

The CFTC is requesting comment on whether the Proposed Order is consistent with the public interest.

b. Purposes of the CEA

Under section 3(b), in order to foster the public interests, it is the purpose of the CEA ''to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.'' [101] The Commission believes that the exemptive relief provided in the Proposed Order is consistent with these purposes.[102]

Exempt Entities are either government or cooperatively-owned electric utilities organized under Federal tax laws as nonprofit or not-for-profit entities. All Exempt Entities share a public service mission of providing reliable electric energy to retail electric customers at all times, keeping costs low and supply predictable, while practicing cost-effective environmental stewardship. Elected or appointed government officials or citizens, or cooperative members or consumers, are directly involved in the day-to-day governance and management of an Exempt Entity's facilities and operations. There are no shareholders or outside investors to profit from the Exempt Non-Financial Energy Transactions, and any revenues accruing from operational risk management activities related to the electric facilities and operations are used to reduce the cost of electric service provided to cooperative members and retail customers.

Accordingly, the Commission believes that Exempt Non-Financial Energy Transactions between Exempt Entities are less vulnerable to fraudulent or manipulative trading activity. Congress affirmatively recognized this in the context of wholesale electric energy markets when it exempted government and cooperatively-owned electric utilities from FERC's plenary jurisdiction under FPA section 201(f).[103] Furthermore, the Proposed Order retains the Commission's general anti-fraud, anti-manipulation, and enforcement authority,[104] and all Exempt Entities, regardless of status under FPA section 201(f), remain subject to FERC's market manipulation authority.[105] Therefore, the relief provided in the Proposed Order does not interfere with the Commission's ability to police markets for manipulation and fraudulent trade practices.

Finally, the Commission does not view Exempt Non-Financial Energy Transactions between Exempt Entities as posing a systemic risk to the financial integrity or stability of markets. By definition, Exempt Entities do not consist of interconnected ''financial institutions'' subject to prudential regulation because they are ''systemically important.'' [106] Exempt Non-Financial Energy Transactions do not involve financial market professionals, intermediaries, or any other entity registered with the Commission. Rather, Exempt Non-Financial Energy Transactions involve counterparty credit risk between only Exempt Entities, which share a common not-for-profit public service mission and are obligated to pursue operational, not financial, performance mandates. The Commission does not believe that imposing the requirements of the CEA on these transactions would reduce systemic risk or bolster the financial stability and soundness of the markets that the Commission does regulate. Accordingly, the Commission does not view the relief provided in the Proposed Order as being contrary to this purpose of the CEA.

The CFTC is requesting comment on whether the Proposed Order is consistent with the purposes of the CEA.

4. Appropriate Persons

Exempt Entities entering into Exempt Non-Financial Energy Transaction are ''appropriate persons'' for purposes of satisfying CEA section 4(c)(2) for different reasons, depending on the type of electric utility and the corresponding section of the CEA pursuant to which the relief in the Proposed Order is being granted. The Commission believes that Congress, in enacting CEA section 4(c)(6)(C), implicitly identified entities described by FPA section 201(f) as appropriate persons for purposes of qualifying for an exemption pursuant to CEA section 4(c)(6); otherwise, Congress would not have mandated that the Commission ''shall * * * exempt'' such entities upon making the required findings.[107]

Next, for the reasons just noted, the Commission believes that federally-recognized Indian tribes that own electric facilities are analogous to government entities that sponsor electric facilities, and therefore qualify as appropriate persons pursuant to CEA section 4(c)(3)(H).[108]

Finally, the Commission believes that non-FPA 201(f) electric cooperatives are appropriate persons for the reasons articulated in the Petition with respect to such cooperatives. Under CEA section 4(c)(3)(K), the Commission may determine other persons not enumerated elsewhere in section 4(c)(3) to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. As previously noted, the Commission believes that Congress implicitly deemed FPA 201(f) entities to be appropriate persons, thus indicating that FPA 201(f) entities have the requisite financial soundness and operational capabilities to execute transactions that are exempt from the requirements of the CEA.

For the purposes of a 4(c) exemption, the Commission believes that there is no material difference in an electric cooperative's financial soundness or operational capability based upon

[100] The Commission notes that FERC recently has proposed requiring entities described in FPA 201(f) to be subject to limited reporting requirements concerning the availability and prices of wholesale electric energy. In EPAct 2005, Congress added Section 220 to the FPA (16 U.S.C. 824t) directing FERC to ''facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce'' with ''due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.'' *See Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* 135 FERC ¶ 61,053 at PP 21–23 (Notice of Proposed Rulemaking) (2011) (collection of information from ''any market participant'' interpreted to include entities described in FPA 201(f)). The Commission specifically seeks comment on whether, in light of this proposal, the relief provided in the Proposed Order should be revised in the future to require reporting to an SDR for certain transactions.

[101] CEA 3(b); 7 U.S.C. 5(b).

[102] As noted in section III(B)(1) above, the Commission believes that the exemption will promote financial innovation and fair competition.

[103] *See supra* notes 45–50 and accompanying text for a discussion of the FPC's findings in its *Dairyland* decision, affirmed by the federal court in *Salt River,* explaining the underlying rationale for exempting non-investor owned public utilities from the plenary jurisdiction of the FPC.

[104] *See* CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13, and Commission rules 32.4 and Part 180.

[105] *See* FPA 222v; 16 U.S.C. 824v.

[106] Additionally, Exempt Entities do not consist of ''financial entities'' as the term is defined in CEA 2(h)(7)(C)(i).

[107] Alternatively, the Commission notes that many FPA section 201(f) entities are government-owned or sponsored, and therefore would qualify as appropriate persons under CEA section 4(c)(3)(H): ''Any governmental entity * * * or political subdivision thereof, * * * or any instrumentality, agency, or department of any of the foregoing.''

[108] *See id.*

whether or not the electric cooperative meets the criteria of FPA section 201(f).[109] As Petitioners note, an electric cooperative that receives financing from a source other than the RUS or sells more than 4,000,000 megawatt hours of electricity per year is at least as financially sound and operationally qualified as electric cooperatives described in FPA section 201(f).[110] The Commission notes that non-201(f) electric cooperatives arguably are more financially sound and operationally capable, as they likely maintain greater generation and transmission assets capable of facilitating the excess electric energy sales.[111] Additionally, non-FPA 201(f) electric cooperatives that sell more than the threshold amount of electric energy per year often are in a position to benefit from better financing terms than those offered by the RUS based on having greater financial assets to post as collateral.

The CFTC is requesting comment as to whether the Exempt Entities identified in the Proposed Order are appropriate persons.

5. Ability to Discharge Regulatory or Self-Regulatory Duties

The exemptive relief contained in the Proposed Order will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA. Nothing in the Proposed Order will prevent the Commission or any contract market from carrying out regulatory or self-regulatory duties for markets in a commodity that may also be involved in an Exempt Non-Financial Energy Transaction. As previously discussed, given the bespoke nature of these transactions, they are not connected to the pricing and market characteristics of other related derivative products that trade on exchange. The Commission is less concerned about the regulatory oversight of Exempt Entities as they are ''effectively self-regulating'' bodies subject to government or cooperative-member management.

The CFTC is requesting comment as to whether the Proposed Order will have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

IV. Proposed Order

The Commission has determined, pursuant to Commodity Exchange Act (''CEA'') sections 4(c)(1) and 4(c)(6), to exempt from all requirements of the CEA and Commission regulations issued there under any Exempt Non-Financial Energy Transaction entered into solely between Exempt Entities, subject to the following definitions and conditions:

A. *Exempt Entity* shall mean (i) any government-owned electric facility recognized under Federal Power Act (''FPA'') section 201(f), 16 U.S.C. 824(f); (ii) any electric facility otherwise subject to regulation as a ''public utility'' under the FPA that is owned by an Indian tribe recognized by the U.S. government pursuant to section 104 of the Act of November 2, 1994, 25 U.S.C. 479a–1; (iii) any cooperatively-owned electric utility, regardless of status pursuant to FPA section 201(f), so long as the utility is treated as a ''cooperative'' organization under Internal Revenue Code section 501(c)(12) or 1381(a)(2)(C), 26 U.S.C. 501(c)(12), 1381(a)(2)(C), and exists for the primary purpose of providing electric energy service to its member/owner customers at the lowest cost possible; or (iv) any not-for-profit entity that is wholly owned, directly or indirectly, by any one or more of the foregoing. The term ''Exempt Entity'' does not include any ''financial entity,'' as defined in CEA section 2(h)(7)(C).

B. *Exempt Non-Financial Energy Transaction* means any agreement, contract, or transaction based upon a ''commodity,'' as such term is defined and interpreted by the CEA and regulations there under, so long as the primary purpose of the agreement, contract, or transaction is to satisfy existing or anticipated contractual obligations to facilitate the generation, transmission, and/or delivery of electric energy service to customers at the lowest cost possible, and the agreement, contract, or transaction is intended for making or taking physical delivery of the commodity upon which the agreement, contract, or transaction is based. The term ''Exempt Non-Financial Energy Transaction'' excludes agreements, contracts, and transactions based upon, derived from, or referencing any interest rate, credit, equity or currency asset class, or any grade of a metal, agricultural product, crude oil or gasoline that is not used as fuel for electric energy generation. Exempt Non-Financial Energy Transactions are limited to the following categories, which may exist as stand-alone agreements or as components of larger agreements that combine only the following categories of transactions:

1. *Electric Energy Delivered* transactions consist of arrangements in which a provider Exempt Entity agrees to deliver a specified amount of electric energy to a recipient Exempt Entity within a defined geographic service territory, load, or electric system over the course of an agreed period of time. Such transactions include ''full requirements'' contracts, under which one Exempt Entity becomes obligated to provide, and the recipient Exempt Entity becomes obligated to take, all of the electric energy the recipient needs to provide reliable electric service to its fluctuating electric load over a specified delivery period at one or multiple delivery points or locations, net of any electric energy the recipient is able to produce through generation assets that it owns.

2. *Generation Capacity* transactions consist of agreements in which a recipient Exempt Entity purchases from a provider Exempt Entity the right to call upon a specified amount of the provider Exempt Entity's electric energy generation assets to supply electric energy within a defined geographic area, regardless of whether such right is ever exercised for the purposes of the recipient Exempt Entity meeting its location-specific reliability obligations. Such transactions also may specify certain conditions that must exist prior to exercising the right to use an Exempt Entity's generation assets, or establish an agreement between Exempt Entities to share pooled electric generation assets in order to satisfy regionally-imposed demand side management program requirements.

3. *Transmission Services* transactions consist of arrangements in which a provider Exempt Entity owning transmission lines sells to a recipient Exempt Entity the right to deliver a specified amount of the recipient Exempt Entity's electric energy from one designated point on the transmission lines to another, at a set price per wattage and over a certain time period, in order for the recipient Exempt Entity to provide electric energy to its customers. Such transactions may include ancillary services related to transmission such as congestion management and system losses.

[109] As previously noted, non-FPA 201(f) electric cooperatives are governed by the same public service mission as FPA 201(f) electric cooperatives (i.e., providing members with electric energy at the lowest cost possible).

[110] In expanding the FPA 201(f) exemption to include RUS-financed electric cooperatives, Congress went a step further in EPAct 2005 by also including electric cooperatives that sold less than 4,000,000 megawatt hours of electricity per year. According to counsel for Petitioners, this provision was meant to capture certain small, distribution-only cooperatives that did not receive financing from the RUS.

[111] Alternatively, certain non-FPA 201(f) electric cooperatives may qualify as appropriate persons based on their net worth exceeding $1,000,000 or total assets exceeding $5,000,000. *See* CEA section 4(c)(3)(F).

4. *Fuel Delivered* transactions include arrangements used to buy, sell, transport, deliver, or store fuel used in the generation of electric energy by an Exempt Entity. Additionally, Fuel Delivered transactions may include an agreement to manage the operational basis or exchange (*i.e.,* location or time of delivery) risk of an Exempt Entity that arises from its location-specific, seasonal or otherwise variable operational need for fuel to be delivered.

5. *Cross-Commodity Pricing* transactions include arrangements such as heat rate transactions and tolling agreements in which the price of electric energy delivered is based upon the price of the fuel source used to generate the electric energy. Cross-Commodity transactions also include fuel delivered agreements in which the price paid for fuel used to generate electric energy is based upon the amount of electric energy produced.

6. Other Goods and Services

Other Goods and Services transactions consist of arrangements in which the Exempt Entities enter into an agreement to share the costs and economic benefits related to construction, operation, and maintenance of facilities for the purposes of generation, transmission, and delivery of electric energy to customers. In a full requirements contract between Exempt Entities that share ownership of generation assets, the provider Exempt Entity may determine how generation to meet the recipient Exempt Entity's full requirements will be allocated among the provider's independent generation assets, the jointly-owned generation assets, and the recipient's independent generation assets. Other Goods and Services transactions also may include agreements between Exempt Entities to operate each other's facilities, share equipment and employees, and interface on each other's behalf with third parties such as suppliers, regulators and reliability authorities, and customers, regardless of whether such agreements are triggered as contingencies in emergency situations only or are applicable during the normal course of operations of an Exempt Entity.

C. *Conditions.* The relief provided herein is subject to the Commission's general anti-fraud, anti-manipulation and enforcement authority under the CEA, including but not limited to CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13, and Commission rules 32.4 and Part 180. Additionally, the Commission reserves its authority to inspect books and records kept in the normal course of business that relate to Exempt Non-Financial Energy Transactions between Exempt Entities pursuant to the Commission's regulatory inspection authorities. The relief provided herein does not affect the jurisdiction of FERC or any other government agency over the entities and transactions described herein. Furthermore, the Commission reserves the right to revisit any of the terms and conditions of the relief provided herein and alter or revoke such terms and conditions as necessary in order for the Commission to execute its duties and advance the public interests and purposes under the CEA, including a determination that certain entities and transactions described herein should be subject to the Commission's full jurisdiction.

V. Request for Comment

The Commission requests comment on all aspects of the issues presented by this proposed order. The Commission specifically requests comment on the scope of both the (a) transactions and (b) entities which would be eligible to rely upon the exemption provided in the proposed order. In addition, the Commission requests comment on the following questions:

1. Should the Commission limit the scope of Exempt Entities to only those electric utilities described by FPA section 201(f), given that Congress limited CEA section 4(c)(6)(C) thereto (or, is it an appropriate use of the Commission's general exemptive authority pursuant to CEA section 4(c)(1) to exempt the non-FPA 201(f) electric cooperatives)? If it is appropriate to expand the scope beyond FPA 201(f) entities, should the Commission still limit the scope of electric cooperatives included as Exempt Entities to only those cooperatives with tax exempt status under the IRC (*i.e.,* those that receive at least 85 percent of revenue from the cooperative membership)?

2. In light of other exemptive authority that was added to the CEA by the Dodd-Frank Act, such as the end-user exception in CEA section 2(h)(7)(A), is relief pursuant to CEA section 4(c) necessary and/or appropriate for Exempt Non-Financial Energy Transactions between Exempt Entities as described herein?

3. Should the Commission require that any Exempt Entity that is described by FPA section 201(f) relying on the relief provided herein notify the Commission of its change in status under FPA section 201(f) as a condition of such relief? If so, what purpose(s) would this serve?

4. For the purpose of issuing this Proposed Order, the Commission concluded that Exempt Non-Financial Energy Transactions do not serve a price discovery purpose. Please comment on the Commission's assessment. What facts and circumstances would require the Commission to revisit its analysis and alter the relief proposed herein such that reporting to an SDR should be required for certain transactions? [112]

5. The Commission believes that the Proposed Order's definition of ''Exempt Non-Financial Energy Transaction,'' in combination with the definition of ''Exempt Entity'', should ensure that Exempt Non-Financial Energy Transactions cannot be used for speculative purposes. Please comment on whether the Proposed Order would so foreclose the possibility for speculative trading and, if not, how the Proposed Order should be modified to achieve such a goal.

6. The Commission has proposed that electric facilities owned by only federally-recognized Indian tribes be included as Exempt Entities for purposes of the relief provided in the Proposed Order. The Commission specifically requests comment on every aspect of the Proposed Order as it relates to Indian tribes.

7. The Commission has limited its definition of Exempt Non-Financial Energy Transaction to six categories. Do any of the transactions described by or covered under these categories fail to come under the Commission's jurisdiction, such that relief pursuant to CEA section 4(c) is unnecessary and/or inappropriate, either due to an interpretation in the Products Release or otherwise?

8. Per the Petition's request, should the Commission stipulate that the relief provided in the Proposed Order (i) applies retroactively to the enactment of the Dodd-Frank Act and (ii) that transactions covered by the relief will not be considered by the Commission for any purpose which affects or may affect an Exempt Entity's regulatory status under the CEA (*e.g.,* in determining status as a swap dealer or major swap participant)?

9. The Petition requested that the Commission provide categorical relief by including ''any other agreement, contract, or transaction to which an Exempt Entity is a party.'' Should the Commission provide such categorical relief, so long as the primary purpose of

[112] Commenters should consider what impact, if any, it would have on the response to the question posed if FERC finalizes its recent proposal to require price transparency reporting in electric wholesale markets, even by FPA 201(f) entities. *See supra* note 100.

the agreement, contract, or transaction is to satisfy existing or anticipated contractual obligations to facilitate the generation, transmission, and/or delivery of electric energy service to customers at the lowest cost possible, and the contract is intended to be settled through physical delivery of the underlying commodity?

10. Can any Exempt Non-Financial Energy Transaction, as defined in the Proposed Order, or any component of an Exempt Non-Financial Energy Transaction, be used to hedge price risk in an underlying commodity? If so, should the Commission explicitly exclude such price-hedging transactions from the definition of Exempt Non-Financial Energy Transaction?

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that Federal agencies consider whether proposed rules will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact. The relief provided in the Proposed Order may be available to some small entities, because they may fall within standards established by the Small Business Administration (''SBA'') defining entities with electric energy output of less than 4,000,000 megawatt hours per year as a ''small entity.'' [113]

The Commission has considered carefully the potential effect of this Proposed Order on small entities and has determined that the proposed order will not have a significant economic impact on any Exempt Entity, including any entities that may be small. Rather, the Proposed Order relieves the economic impact that the Exempt Entities, including any small entities that may opt to take advantage of it, by exempting certain of their transactions from the application of substantive regulatory compliance requirements of the CEA and Commission regulations there under. Significantly, the Proposed Order prevents new requirements for swaps, such as clearing, trade execution and regulatory reporting, from affecting transactions that Exempt Entities traditionally have engaged in to serve their unique public service mission of providing reliable, affordable electric energy service to customers. Absent such relief and to the extent Exempt Non-Financial Energy Transactions would qualify as swaps, small entities covered by the Proposed Order could be subject to compliance with all aspects of the CEA and its implementing regulations. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposed Order will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act (''PRA''), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB''). The Proposed Order does not contain any new information collection requirements that would require approval of OMB under the PRA.[114] While the Commission reserves its authority to inspect books and records kept in the normal course of business that relate to Exempt Non-Financial Energy Transactions between Exempt Entities pursuant to the Commission's regulatory inspection authorities, the Commission is not imposing a recordkeeping burden with respect to the books and records of Exempt Non-Financial Energy Transactions that already are kept in the normal course of business. Moreover, any inspection of books and records typically only will occur in the event that circumstances warrant the need to gain greater visibility with respect to Exempt Non-Financial Energy Transactions as they relate to Exempt Entities' overall market positions and to ensure compliance with the terms of this Proposed Order. Accordingly, each inquiry would be specific to the facts triggering the inquiry, and thus will not involve ''answers to identical questions posed to * * * ten or more persons,'' as the term ''collection of information'' is defined in the PRA in pertinent part.[115]

C. Consideration of Costs and Benefits

1. Introduction

Section 15(a) of the CEA [116] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

Prior to the passage of the Dodd-Frank Act, swap market activity was not regulated. In the wake of the financial crisis of 2008, Congress adopted the Dodd-Frank Act, in part, to address conditions with respect to swap market activities.[117] Among other things, the Dodd-Frank Act amends the CEA to establish a comprehensive regulatory framework for swaps.[118] In amending the CEA, however, the Dodd-Frank Act preserved the Commission's authority under CEA section 4(c)(1) to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions, including swaps, from select provisions of the CEA.[119] It also added new subparagraph 4(c)(6)(C) to the CEA specifically directing the Commission, in accordance with 4(c)(1) and (2), to exempt agreements, contracts, or transactions entered into between FPA 201(f) entities if doing so ''is consistent with the public interest and the purposes of'' the CEA.[120] For reasons explained above,[121] the Commission proposes to exercise its

[113] U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* footnote 1 (effective March 26, 2012), available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[114] 44 U.S.C. 3501 *et seq.*

[115] 44 U.S.C. 3502(3)(a)(1). *See also* 44 U.S.C. 3518(c)(1)(B)(i) and (ii) (excluding collections of information related to administrative investigations against specific individuals or entities, and any subsequent civil actions).

[116] 7 U.S.C. 19(a).

[117] As the Financial Crisis Inquiry Commission explained:

The scale and nature of the [OTC] derivatives market created significant systemic risk throughout the financial system and helped fuel the panic in the fall of 2008: millions of contracts in this opaque and deregulated market created interconnections among a vast web of financial institutions through counterparty credit risk, thus exposing the system to a contagion of spreading losses and defaults.

Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at 386, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*

[118] *See* discussion above at note [13]. Dodd-Frank Act section 721 (amending the CEA to add new section 1a(47)) defines the term ''swap'' to include ''[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more * * * commodities * * *'').

[119] Section 4(c)(1) of the CEA.

[120] As discussed above in section I.A., CEA sections 4(c)(2) and 4(c)(3) further articulate the conditions precedent to granting an exemption under 4(c)(1) and 4(c)(6)(C), including that the exempted agreements, contracts, or transactions be entered into between ''appropriate persons,'' as that term is defined in 4(c)(6)(3).

[121] *See* section III.B. above.

authority under CEA section 4(c)(1) and 4(c)(6) with regard to Exempt Non-Financial Energy Transactions [122] engaged in between Exempt Entities,[123] subject to the Commission's general anti-fraud, anti-manipulation, and enforcement authority pursuant to CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13, and Commission rules 32.4 and Part 180. Additionally, the Commission has reserved its authority to inspect the books and records of Exempt Non-Financial Energy Transactions already kept in the normal course of business pursuant to the Commission's regulatory inspection authorities, in the event that circumstances warrant the need to gain greater visibility with respect to Exempt Non-Financial Energy Transactions as they relate to Exempt Entities' overall market positions and to ensure compliance with the terms of this Proposed Order.

In the discussion that follows, the Commission considers the costs and benefits of the exemptive order proposed herein (the ''Proposed Order'') to the public and market participants generally, and to Exempt Entities specifically. As earlier discussed in sections I.A. and III.A.2., to exempt transactions under CEA section 4(c), the Commission need not first determine—and is not determining—whether the transactions subject to the exemption fall within the CEA. However, to capture all potential costs and benefits, this consideration assumes that the transactions may now or in the future be swaps.[124] In the event the subject transactions would not be subject to the Commission's jurisdiction, the costs and benefits of this Proposed Order relative to the baseline scenario discussed below would be zero.

2. Baseline

The Commission considers the costs and benefits of this Proposed Order against a baseline scenario of non-action. In other words, the proposed baseline is the alternative situation that would result if the Commission declines to exercise its exemptive authority under CEA 4(c). This means that to the extent Exempt Non-Financial Energy Transactions engaged in between Exempt Entities qualify as a transaction subject to regulation under the CEA, they are subject to the regulatory regime that the CEA, as amended by the Dodd-Frank Act, and Commission regulations prescribes.

Under the post-Dodd-Frank Act regulatory regime for swaps, Exempt Entity swap counterparties that, as represented in the Petition, are ''nonfinancial end-users of [Exempt Non-Financial Energy Transactions entered into] only to hedge or mitigate commercial risks'' [125] are subject to the Commission's general anti-fraud, anti-manipulation, and enforcement authority,[126] as well as requirements for swap data reporting [127] and recordkeeping.[128] CEA section 2(h)(7) (the ''end-user exception''), excepts a swap from swap clearing [129] and trade execution,[130] requirements if one counterparty is ''not a financial entity; * * * is using swaps to hedge or mitigate commercial risk; and * * * notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.'' However, unless both Exempt Entity counterparties are ''eligible contract participants'' (''ECPs''),[131] CEA section 2(e) prohibits them from executing a swap other than on a registered DCM, including directly transacting the swap bilaterally.[132] Against this baseline scenario, with respect to an Exempt Non-Financial Energy Transaction that is a swap, the public and market participants, including Exempt Entities, would experience the costs and benefits related to the regulations, noted above, for them as swaps. As considered below, the Proposed Order could alter these costs and benefits.

Also, the post-Dodd-Frank Act regulatory regime retains requirements applicable to ''contract[s] of sale of a commodity for future delivery'' within the meaning of CEA section 4(a) (commonly referred to as futures contracts), including that section's exchange-trading requirement for such contracts. Though the Commission need not first determine whether the transactions subject to exemption under CEA section 4(c) are futures or swaps, it has defined the boundaries for inclusion within the Exempt Non-Financial Energy Transaction category in a way that comports with the distinctions between futures contracts subject to CEA section 4(a) and non-

[122] As discussed and further described above in section III.A.2., these consist of: any agreement, contract, or transaction based upon a ''commodity,'' as such term is defined and interpreted by the CEA and regulations there under, so long as the primary purpose of the agreement, contract, or transaction is to satisfy existing or anticipated contractual obligations to facilitate the generation, transmission, and/or delivery of electric energy service to customers at the lowest cost possible. When entered into, Exempt Non-Financial Energy Transactions shall always be intended for making or taking physical delivery of the commodity upon which the transaction is based, and such commodity shall never be based upon, derived from, or reference any interest rate, credit, equity or currency asset class, or any grade of a metal, agricultural product, crude oil or gasoline that is not used as fuel for electric generation. Exempt Non-Financial Energy Transactions are limited to the following categories: electric energy delivered, generation capacity, transmission services, fuel delivered, cross-commodity pricing, and other goods and services.

[123] As discussed and further described above in section III.A.1, these are: (i) Any government-owned electric facility recognized under Federal Power Act (''FPA'') section 201(f), 16 U.S.C. 824(f); (ii) any electric facility otherwise subject to regulation as a ''public utility'' under the FPA that is owned by an Indian tribe recognized by the U.S. government pursuant to section 104 of the Act of November 2, 1994, 25 U.S.C. 479a–1; (iii) any cooperatively-owned electric utility, regardless of status pursuant to FPA section 201(f), so long as the utility is treated as a ''cooperative'' organization under Internal Revenue Code section 501(c)(12) or 1381(a)(2)(C), 26 U.S.C. 501(c)(12), 1381(a)(2)(C), and exists for the primary purpose of providing electric energy service to its members at the lowest possible cost; or iv) any not-for-profit entity that is wholly owned, directly or indirectly, by any one or more of the foregoing.

[124] *Accord* note 81, *supra.*

[125] Petition at 33.

[126] *See* CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13, and Commission rules 32.4 and Part 180.

[127] The CEA as amended by the Dodd-Frank Act contemplates two types of reporting to swap data repositories (''SDRs''). First, is real-time reporting: For every swap executed, certain transaction information, including price and volume, is to be reported to an SDR'') ''as soon as technologically practicable.'' CEA section 2(a)(13)(A) & (C); *see also* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012) (adopting 17 CFR part 43 regulations to implement real-time reporting). For swaps executed off of a DCM or SEF and for which neither counterparty is a swap dealer or major swap participant—as the Commission expects Exempt Non-Financial Energy Transactions engaged in between Exempt Entities would be—the real-time reporting obligation for the transaction falls to one of the counterparties, as agreed between themselves. 17 CFR § 43.3(a)(3) Second, for each swap, additional information beyond that required in real-time reports must be reported to an SDR in a ''timely manner as may be prescribed by the Commission.'' CEA section 2(a)(13)(G); *see also* Swap Data Recordkeeping and Reporting Requirements 77 FR 2136 (Jan. 13, 2012) (adopting 17 CFR part 45); Swap Data Recordkeeping and Reporting Requirements: Pre-enactment and Transition Swaps 77 FR 35200 (June 12, 2012) (adopting 17 CFR part 46).

[128] Swap Data Recordkeeping and Reporting Requirements 77 FR 2136 (Jan. 13, 2012) (adopting 17 CFR part 45); Swap Data Recordkeeping and Reporting Requirements: Pre-enactment and Transition Swaps 77 FR 35200 (June 12, 2012) (adopting 17 CFR part 46).

[129] CEA section 2(h)(1)(A)(it ''shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing * * * if the swap is required to be cleared'').

[130] Transactions subject to the clearing requirement of CEA section 2(h)(1) must be executed on either a designated contract market (''DCM'') or a swap execution facility (''SEF''). CEA section 2(h)(8).

[131] The term is defined in CEA section 1a(18). *See also* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[132] CEA section 2(e).

futures transactions.[133] For this reason, the Commission foresees no costs or benefits relative to the baseline attributable to exempting Exempt Non-Financial Energy Transactions as proposed from CEA section 4(a).

The Commission is also cognizant of the regulatory landscape as it existed before the Dodd-Frank Act's enactment. Any Exempt Non-Financial Energy Transactions engaged in between Exempt Entities that now would qualify as swaps (excluding options) were not regulated prior to Dodd-Frank. Thus, measured against a pre-Dodd-Frank Act reference point, Exempt Entities engaging in such swaps could experience costs attributable to the conditions placed upon the Proposed Order. For example, Exempt Entities were not subject to the Commission's regulatory inspection authorities with respect to swap transaction records prior to the enactment and effectiveness of the Dodd-Frank Act.

As a general matter, in its cost-benefit considerations, where reasonably feasible, the Commission endeavors to estimate quantifiable dollar costs. The costs and benefits of the Proposed Order, however, are not presently susceptible to meaningful quantification. Accordingly, the Commission discusses proposed costs and benefits in qualitative terms.

3. Costs

To Exempt Entities

The proposed rule is exemptive and would provide Exempt Entities with relief from regulatory requirements of the CEA for the narrow category of Exempt Non-Financial Energy Transactions engaged in between them. As with any exemptive rule or order, the proposed rule is permissive, meaning that potentially eligible affiliates are not required to elect it. Accordingly, the Commission assumes that an entity would rely on the Proposed Order only if the anticipated benefits warrant the costs. Here, the Proposed Order provides for the continued application of the anti-fraud, anti-manipulation, and enforcement provisions of the CEA and its implementing regulations, and additionally reserves the Commission inspection authority for books and records that the Exempt Entities currently prepare and retain [134]—all continuations of the baseline regulatory scheme established in the CEA. Accordingly, they generate no incremental costs.

To Market Participants and the Public

The Commission has considered whether an exemption from the CEA as proposed for Exempt Non-Financial Energy Transactions engaged in between Exempt Entities will expose market participants and the public to the risks that the CEA guards against—a potential cost. For a variety of reasons, the Commission believes that it does not. These reasons include the following:

- The highly bespoke nature of Exempt Non-Financial Energy Transactions, as well as the fact that they are used to manage unique electricity industry operational risks, rather than price risk of an underlying commodity, make them ill-suited for exchange trading and/or to serve a useful price discovery function.[135]
- The incentive structure for Exempt Entities—as limited to not-for-profit governmental, tribal, and IRC section 501(c)(12) or section 1381(a)(2)(c) electric cooperative entities—is substantially different than that of investor-owned entities and poses a low risk for fraud, manipulation, or other abusive practices.[136]
- Exempt Non-Financial Energy Transactions are executed bilaterally within a closed-loop of non-financial, not-for-profit electric utility entities, are not market facing, and therefore have little, if any, ability to materially impact liquidity, fairness or financial security of derivative product trading on DCMs or SEFs.[137]
- This closed-loop trading characteristic, combined with the nonfinancial nature of the transacting parties, also limits the ability of Exempt Non-Financial Energy Transactions to create systemic risk.[138]

Moreover, besides carefully defining the boundaries for Exempt Non-Financial Energy Transactions between Exempt Entities, the Commission's Proposed Order incorporates conditions designed to protect the markets subject to the Commission's jurisdiction. Specifically, the Commission proposes to retain the general anti-fraud, anti-manipulation, and enforcement authority contained in the CEA and its implementing regulations. Additionally, the Commission is also retaining authority to inspect books and records, pursuant to its regulatory inspection authorities, in the event that circumstances warrant the need to gain greater visibility with respect to Exempt Non-Financial Energy Transactions as they relate to Exempt Entities' overall market positions and compliance with this Proposed Order. Accordingly, based on the expectations that—for the narrow subset of electric industry transactions covered by this Proposed Order—the risk potential, at most, is remote and the prescribed conditions appropriate to contain them to the extent they may emerge, the Commission foresees no material costs attributable to risk associated with the Proposed Order.

The Commission has also considered the potential for the Proposed Order to exact a competitive cost by affording Exempt Entities an advantage vis-à-vis other market participants that may not be entitled to the exemption. As not-for-profit governmental, tribal, and cooperative entities as defined in the Proposed Order, the Commission understands that the mandate for Exempt Entities is to provide reliable, affordable electricity for their customers. While the Proposed Order will afford Exempt Entities flexibility and/or reduced compliance burden to manage their operational risks relative to non-Exempt Entities, the Commission has no basis to expect that in so doing the Proposed Order will impose a competitive cost on the markets subject to its jurisdiction.

4. Benefits

To Exempt Entities

Measured against the baseline scenario, the Proposed Order expectedly will benefit Exempt Entities by lessening the likelihood that CEA compliance would diminish their ability and/or incentive to continue to engage in Exempt Non-Financial Energy Transactions that, as described in the

[133] *See, e.g.,* Statement of Policy Concerning Swap Transactions, 54 Fed. Reg. 30694 (CFTC July 21, 1989). For example, the transactions encompassed by this proposed exemption would be limited to those that are highly bespoke and thus not suitable for exchange trading, executed exclusively bilaterally, off-exchange between counterparties, and undertaken with the intent of making or taking physical delivery of the commodity upon which the transaction is based.

[134] For example, Exempt Entities that receive financing from the Rural Utilities Service (''RUS'') are required to keep records of all master agreements and term contracts for the procurement of goods and services. *See* 18 CFR 125.3 (Schedule of records and periods of retention); RUS Bulletin 180–2. Under the books and records inspection authority contained in the Proposed Order, the Commission could request any of these procurement agreements that document an Exempt Non-Financial Energy Transaction for the purchase or sale of ''electric energy delivered,'' as such term is defined in the Proposed Order.

[135] As explained in section III.B.3.d, above, the commercial risks that Exempt Non-Financial Energy Transactions face generally are not related to fluctuations in the price of a commodity, but are rather related to electricity retail demand fluctuations. Exempt Entities engage in Exempt Non-Financial Energy Transactions primarily to assure their ability to meet production, transmission, and/or distribution obligations, not to hedge against the risk of electricity prices rising or falling.

[136] *See* section II.A.1. above.

[137] *See* section III.B.3.a. above.

[138] *See* section III.B.3.b. above.

Petition and above,[139] are an operational tool relied upon by Exempt Entities to effectively execute their public service mission. It will also benefit them by avoiding regulatory costs to comply with CEA swap requirements whether or not any Exempt Non-Financial Energy Transaction actually constitutes a swap.[140]

To the extent any Exempt Non-Financial Energy Transactions are swaps, as a threshold matter Exempt Entities could not execute them off of a registered DCM unless both Exempt-Entity counterparties qualify as ECPs.[141] The relevant criteria for determining ECP status varies for Exempt Entities that are governmental entities (or political subdivisions of governmental entities) and those that are not. For the former, governmental Exempt Entities must meet certain line of business requirements,[142] or ''own * * * and invest * * * on a discretionary basis $50,000,000 or more in investments.[143] For the latter, non-governmental Exempt Entities either must have: (a) Assets exceeding $10,000,000; (b) a guarantee for obligations; or, (c) greater than $1,000,000 net worth and ''enter * * * into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business.'' [144] While some of the larger Exempt Entities in particular may meet the definitional requirements to be ECPs, the Petition does not provide information evidencing that all Exempt Entities for all types of Exempt Non-Financial Energy Transaction clearly would.[145]

If Exempt Entities are not ECPs, and given that Exempt Non-Financial Energy Transactions, as proposed, are bespoke to an extent that makes them incapable of exchange trading, absent Commission action non-ECP Exempt Entities would be unable to engage bilaterally in any Exempt Non-Financial Energy Transactions that are swaps. Relative to a circumstance that would preclude non-ECP Exempt Entities from continuing to engage in Exempt Non-Financial Energy Transactions that are swaps, the Proposed Order would afford the benefit of allowing the use of transactions that are closely related to Exempt Entities' public service mission to provide affordable, reliable electricity. The Proposed Order would also save Exempt Entities the time and expense that would be necessitated to determine if they were ECPs. For, with the Proposed Order, ECP status becomes largely irrelevant, while without it, Exempt Entities may have to concern themselves with ECP status determinations as a threshold for engaging in certain transactions.

The Proposed Order would also avoid potential costs that Exempt Entities might incur to comply with swap data reporting and recordkeeping requirements as articulated in Commission regulations for any Exempt Non-Financial Energy Transactions that were swaps.[146]

Even for Exempt Non-Financial Energy Transactions ultimately determined not to be swaps, if Exempt Entities perceived some potential that they could be swaps (now or as evolved in the future), Exempt Entities would likely need to expend resources to monitor contemplated transactions and make status determinations as to them. Moreover, the bespoke nature of these transactions could complicate the ability to generalize conclusions across transactions, potentially resulting in a need for more frequent, individualized assessments that could multiply determination costs. While the Commission lacks a basis to meaningfully project any such benefit in dollar terms, qualitatively it expects that the benefit would include the avoided costs of training staff to differentiate between swap and non-swap transactions and, in some cases at least, to obtain an expert legal opinion to support a determination. Additionally, uncertainty about whether a certain transaction would or would not be deemed a swap could prompt an Exempt Entity to forego a beneficial transaction or to substitute a transaction that served the operational needs less effectively. Avoiding a result that would diminish the use of operationally-efficient Exempt Non-Financial Energy Transactions is another benefit.

To Market Participants and the Public

For reasons similar to those discussed above in the Commission's analysis of the Proposed Order under CEA sections 4(c)(1) and (6), the Commission expects that this Proposed Order will benefit the public generally.[147]

First, the Commission believes that the Proposed Order aligns with the beneficial public interests served by the FPA, which—in addition to granting comprehensive jurisdiction over the electric industry to FERC—reflects, through FPA section 201(f)'s exemption, Congress' implicit view that, with respect to certain activities, a regulatory light-touch and avoidance of overlapping regulatory regimes for governmental and small cooperative electric utilities serves the public-interest objectives of the FPA.[148] The

[139] Petition at 12 (transactions for which exemption requested ''are intrinsically related to the needs of * * * the [not-for-profit] Electric Entities * * * which arise from their respective electric facilities and ongoing electric operations and public service obligations'' (citation omitted)); section III.A.2, above (the proposed order defines Exempt Non-Financial Energy Transactions as any agreement, contract, or transaction entered into primarily ''to satisfy existing or anticipated contractual obligations to facilitate the generation, transmission, and/or delivery of electric energy service to customers at the lowest cost possible * * * .'').

[140] As discussed below with respect to benefits to market participants and the public, Exempt Entities' members and other customers should be the indirect beneficiaries of these avoided costs.

[141] CEA section 2(e).

[142] That is, have ''a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity [or] incur * * * risks, in addition to price risk, related to the commodity.'' CEA section 1a(17)(A)(i) & (2) (as referenced in CEA section 1a(18)(A)(vii)(aa)). CEA section 1a(18)(A)(vii) specifies alternative criteria to qualify for governmental-entity ECP status that do not appear relevant given that Exempt Entities are not SDs, MSPs, or financial entities.

[143] CEA section 1a(18)(A)(vii)(bb).

[144] CEA section 1a(18)(A)(v).

[145] Furthermore, a comment letter submitted by two of the Petitioners in connection with the Commission rulemaking on the Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant,'' states that some not-for-profit consumer-owned electric utilities ''may not meet the financial tests listed in the definition of ECP due to the relatively small size of their physical assets.'' Letter from NRECA, APPA and LPPC dated February 22, 2011, RIN 3235–AK65, at 12.

[146] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1232–40 (Jan. 9, 2012) (adopting 17 CFR part 43 regulations to implement real-time reporting). Swap Data Recordkeeping and Reporting Requirements 77 FR 2136, 2176–93 (Jan. 13, 2012) (adopting 17 CFR part 45); Swap Data Recordkeeping and Reporting Requirements: Pre-enactment and Transition Swaps 77 FR 35200, 35217–25 (June 12, 2012) (adopting 17 CFR part 46).

Swap Data Recordkeeping and Reporting Requirements 77 FR 2136 (Jan. 13, 2012) (adopting 17 CFR part 45); Swap Data Recordkeeping and Reporting Requirements: Pre-enactment and Transition Swaps 77 FR 35200 (June 12, 2012) (adopting 17 CFR part 46).

[147] In that the impacted transactions are undertaken exclusively in a closed-loop environment from which financial participants are absent, the Commission does not foresee that derivative market participants beyond Exempt Entities will realize either a cost (as earlier discussed) or benefit impact.

[148] *See Salt River Project Agricultural Improvement and Power District* v. *Federal Power Commission,* 391 F. 2d 470, 475 (D.C. Cir. 1968) (''But of the 19 major abuses summarized [in a Federal Trade Commission report to Congress on the electric utility industry], virtually none could be associated with the cooperative structure where ownership and control is vested in the consumer-owners* * * Consequently, the attention of the 74th Congress, in enacting the Federal Power Act, was focused on the sorts of evils associated exclusively with investor-owned utilities'') In *Salt*

Continued

Commission interprets CEA section 4(c)(6)(C), directing the Commission to provide an exemption for FPA 201(f) entities to the extent consistent with the public interest and the CEA, as an extension of that view. Accordingly, by tailoring the Proposed Order for FPA section 201(f) entities (as well as others deemed equally suitable) in a careful manner intended to preserve the public interests protected under the CEA, the Proposed Order accommodates the public interests of both statutes.

Second, in that the proposed Exempt Entities share the same public-service mission of providing affordable, reliable electricity to their customers, those aspects of the Proposed Order that benefit Exempt Entities directly should indirectly benefit their customers as well. For example, the Proposed Order would enable non-ECP Exempt Entities to engage in swap Exempt Non-Financial Energy Transactions that would be barred to them under CEA section 2(e), or facilitate the likelihood that they would continue to engage in Exempt Non-Financial Energy Transactions that they might choose to forego for regulatory uncertainty or costs reasons absent the exemption. In these circumstances, Exempt Entity customers should be the ultimate beneficiaries (via supply reliability and affordability) of the operational risk-management and efficiencies that Exempt Non-Financial Energy Transactions afford. Similarly, to the extent that the Proposed Order enables Exempt Entities to avoid compliance and/or monitoring costs they would otherwise incur, the non-profit structure, compliance with requisite Internal Revenue Code conditions, and public service mission that Exempt Entities share means that the cost savings should be passed through to members and other customers proportionately in the form of lower electricity prices and/or higher revenue distributions to members.

And third, the public also benefits by the promotion of economic and financial innovation that, as explained above,[149] the Commission expects this Proposed Order will further. For, the unique environment in which these electric utilities must operate to reliably serve their customer load in the face of constantly fluctuating demand—compounded by the fact that many of these Exempt Entities do not enjoy the same scale economies as investor-owned utilities—places a premium on innovative solutions to operational issues. Exempt Non-Financial Energy Transactions represent one such innovation. The Commission envisions the Proposed Order, as contemplated by Congress,[150] will provide Exempt Entities regulatory certainty important to their ability to continue to utilize and develop innovative solutions through the use of highly bespoke, physically settled agreements, contracts, and transactions. Accordingly, the Commission expects the Proposed Order to benefit the public.

5. Costs and Benefits as Compared to Alternatives

The chief alternatives to this Proposed Order are for the Commission to: (1) Decline to exercise its exemptive authority, or (2) to exercise its exemptive authority more broadly and without conditions as requested in the Petition.

With respect to the first alternative—decline to exempt—the costs and benefit consideration is the mirror-image of that discussed above relative to the baseline scenario. A decision not to exercise exemptive authority in this circumstance would preserve the current post-Dodd-Frank regulatory environment.

Relative to the second alternative of exercising its exemptive authority more broadly and in a manner that would provide categorical relief from all of the requirements of the CEA as requested in the Petition, the Commission has purposefully proposed to define the categories of exempt entities and transactions more narrowly, and to preserve certain aspects of CEA jurisdiction for them. A potentially material difference between the entities that the Petition sought to exempt and how the Commission proposes to define the term Exempt Entities is the Commission's explicit requirement that an Exempt Entity not be a ''financial entity'' within the meaning of CEA section 2(h)(7)(C). Given, however, that the Petition expressly represents that the not-for-profit electric entities that would be encompassed by the requested exemption ''are all nonfinancial end users,'' [151] the Commission does not foresee a material cost of expressly stating this requirement relative to the Petitioned-for alternative. Conversely, the requirement delineates what the Commission considers an important gating principle for the exemption's appropriateness, and stating it explicitly reduces ambiguity that could fuel future disputes over the issue—a benefit.

Also, compared to the Petition's description of transactions for which exemption was sought, the proposed definition of Exempt Non-Financial Energy Transactions incorporates limiting language [152] and articulates additional definitional elements (*e.g.,* intent at execution to make or take physical delivery of the commodity upon which the transaction is based). The more open-ended, Petitioned-for transaction description theoretically could save Exempt Entities effort that they might otherwise need to expend to determine whether a transaction engaged in between them is or is not exempted compared to the more refined and limited definition of Exempt Non-Financial Energy Transactions that the Commission proposes. That said, an equally, if not more, persuasive case might be made that the greater certitude that the proposed definition's more bounded approach provides should mitigate determination costs. More importantly, given the inability to foresee how these transactions may develop, the Commission considers it prudent and in the public interest to ring-fence the definition within stated parameters to restrict the potential for the transactions to evolve in a manner incompatible with the purposes of the CEA.

Finally, as proposed, the exemption retains the Commission's general anti-fraud, anti-manipulation, and enforcement authority, as well as the Commission's authority to review books and records already kept in the ordinary course of business in the event that circumstances warrant the need to gain greater visibility with respect to Exempt Non-Financial Energy Transactions as they relate to Exempt Entities' overall market positions and to ensure compliance with the terms of this Proposed Order, in contrast to the Petition's request for a wholesale exemption from the CEA. The Commission believes that the first two conditions serve important beneficial ends to ensure the integrity of commodity and commodity derivatives markets within its jurisdiction. To the

River, the court considered whether the FPA 201(f) exemption, which at the time did not expressly encompass REA-financed cooperatives—entities subject to ''extensive [REA] supervision over the planning, construction and operation of the facilities [REA] finances''—fell within the exemption, as the FPC had interpreted that it did. *Id.* at 473. The court found that, among other factors, the Congressional inaction in the face of 30 years of administrative practice extending FPA 201(f) exemptive treatment to REA-financed cooperatives reinforced the FPC's interpretation that REA-financed cooperatives were exempt from FPA coverage as instrumentalities of the Government under Section 201(f). *Id.* at 476.

[150] *See* HOUSE CONF. REPORT NO. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (''4(c) Conf. Report''), noted in section I.A. above.

[151] Petition at 33.

[152] It explicitly limits covered transactions to six articulated categories, while the Petition proposed a more open-ended approach that would have included all transactions relating to particular categories, but not others. *See* Petition at 4–5.

extent Exempt Entities incur some cost to remain compliant with the CEA's anti-fraud, anti-manipulation, and enforcement regime, the Commission considers such costs warranted by the importance of maintaining commodity market and price discovery integrity. The Commission also believes that authority to inspect books and records kept in the ordinary course of business, pursuant to its regulatory inspection authority, as they relate to Exempt Non-Financial Energy Transactions is important to assure visibility into activity in such transactions on an as-needed basis. Further, as a general matter, the Commission expects infrequently to exert its regulatory inspection authority with respect to Exempt Non-Financial Energy Transactions and, as proposed, such authority would involve only records that Exempt Entities keep in the ordinary course of business, only in the event that circumstances warrant the need to gain greater visibility with respect to Exempt Non-Financial Energy Transactions as they relate to Exempt Entities' overall market positions, and only to ensure compliance with the terms of this Proposed Order. The Commission anticipates that any costs occasioned by this condition are relatively insignificant.

6. Consideration of CEA Section 15(a) Factors

a. Protection of Market Participants and the Public

As explained above, the Commission does not foresee that the Proposed Order will have any effect on the protection of market participants and the public. More specifically, Exempt Non-Financial Energy Transactions as transacted bilaterally and in a closed loop between Exempt Entities in the highly specialized and unique electric-industry circumstances proposed for exemption do not appear to the Commission to generate risks of the nature addressed by the CEA. The Commission has attempted to delineate the definitional boundaries for Exempt Entities and Exempt Non-Financial Energy Transactions in a manner that appropriately ring-fences against the possibility that they could generating such risks, either now or as they may evolve in the future. Moreover, the exemption incorporates conditions to counter residual risk that conceivably, though unexpectedly, might survive notwithstanding the Proposed Order's careful definitional crafting.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission foresees no negative impact from the Proposed Order on the efficiency, competitiveness, and financial integrity of markets regulated under the CEA. As narrowly limited to highly bespoke transactions, executed bilaterally between non-financial entities primarily in order to satisfy existing or expected operations-related contractual obligations, as opposed to speculating or hedging against the price risk of an underlying commodity, the Commission foresees little to no capability for Exempt Non-Financial Energy Transactions, to the extent any are swaps, to directly impact swap market efficiency, competitiveness, or financial integrity. Also, the Proposed Order incorporates definitional attributes that largely eliminate the potential for any futures market impact.

Further, as an exercise of the Commission's CEA section 4(c) authority to provide legal certain for novel instruments as Congress intended, the Proposed Order affords Exempt Entities transactional flexibility that the Commission understands to be valuable to their ability to efficiently deploy their limited resources.

c. Price Discovery

The Commission does not foresee that the Proposed Order will directly impact price discovery. As discussed above, the highly bespoke nature of Exempt Non-Financial Energy Transactions, as well as the fact that they are used to manage unique electric industry operational risks rather than price risk of an underlying commodity, appears to make them ill-suited for exchange trading and/or to serve a useful price discovery function.

d. Sound Risk Management Practices

The Commission expects that the Proposed Order will promote the ability of Exempt Entities to manage the operational risks posed by unique electric market characteristics, including the non-storable nature of electricity and demand that can and frequently does fluctuate dramatically within a short time-span. As discussed above, the Commission understands that Exempt Non-Financial Energy Transactions are an important tool facilitating the ability of Exempt Entities to efficiently manage operational risk in fulfillment of their public service mission to provide affordable, reliable electricity.

Also, the Commission does not anticipate that the Proposed Order will compromise systemic risk management. The transactions proposed for exemption are not market facing, but are executed exclusively within closed-loops that do not include financial entities. These characteristics, among others, limit the ability of Exempt Non-Financial Energy Transactions to create systemic risk.

e. Other Public Interest Considerations

In utilizing its section 4(c)(1) and (6)(C) exemptive authority as proposed herein, the Commission believes it is acting to promote the broader public interest in an affordable, reliable electric supply as Congress contemplated.

7. Request for Public Comment on Costs and Benefits

The Commission invites public comment on its cost-benefit considerations, including the consideration of reasonable alternatives.

The Commission invites public comment on the magnitude of specific costs and benefits that would result from the Proposed Order, including data or other information to estimate the dollar value of such costs and benefits.

The Commission invites public comment on any cost or benefit impact, direct or indirect, that the Proposed Order may have with respect to the factors the Commission considers under CEA section 15(a), specifically: (a) Protection of market participants and the public; (b) efficiency, competitiveness and financial integrity of the markets subject to the Commission's jurisdiction; (c) price discovery; (d) sound risk management; and (e) other public interest considerations.

Issued in Washington, DC, on August 16, 2012 by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendices to Request for comment on a proposal to exempt, pursuant to authority in section 4(c) of the Commodity Exchange Act, certain transactions between entities described in section 201(f) of the Federal Power Act, and other electric cooperatives —Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed relief from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) swaps provisions for certain electricity and electricity-related energy transactions between rural electric cooperatives; state, municipal, and tribal power authorities; and federal power authorities.

Congress directed the CFTC, when it is in the public interest, to provide relief from the Dodd-Frank Act's swaps market reform provisions for certain transactions between these entities.

For decades, these entities have been recognized as performing a public service mission, a fundamentally different function than investor-owned utilities. The purpose of these entities is to provide their customers or cooperative members with reliable electric energy at the lowest cost possible. They have been largely exempt from regulation by the Federal Energy Regulatory Commission because of their government entity status or their not-for-profit cooperative status.

The scope of the proposed relief extends only to non-financial electricity and electricity-related energy transactions for the generation, transmission and delivery of electric energy to customers. Such transactions must be intended for making or taking physical delivery of the underlying commodity.

I look forward to receiving public comment on the proposed relief.

[FR Doc. 2012–20589 Filed 8–22–12; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. The Bureau is soliciting comments concerning the information collection efforts relating to the collection titled, ''CFPB Office of Intergovernmental Affairs Outreach Activities.'' The proposed collection has been submitted to the Office of Management and Budget (OMB) for review and approval. A copy of the submission, including copies of the proposed collection and supporting documentation, may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by ''Consumer Financial Protection Bureau'' and the collection title below, to:

- *Agency:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552; (202) 435–9011; and *CFPB_Public_PRA@cfpb.gov.*
- *OMB:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9011 or through the Internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: CFPB Office of Intergovernmental Affairs Outreach Activities.

OMB Number: 3170–00xx.

Type of Review: New generic collection.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contemplates that the Bureau will conduct outreach activities, as appropriate. *See, e.g.* 12 U.S.C. 5495; 12 U.S.C. 5512(c)(1), 12 U.S.C. 5493(d), 12 U.S.C. 5493(b)(2), 12 U.S.C. 5511(c)(6). The Bureau's Office of Intergovernmental Affairs seeks to conduct outreach by collecting information from state, local, and tribal governments related to the Bureau's exercise of its functions under the Dodd-Frank Act. These governments interact closely with consumers and are critical partners in promoting transparency and competition in the marketplace, preventing unfair and unlawfully discriminatory practices, and enforcing consumer financial laws.

The information collected through the Office of Intergovernmental Affairs Outreach Activities will be shared, as appropriate, within the Bureau in the exercise of its functions, such as the Bureau's financial education, rulemaking, market monitoring, outreach to traditionally underserved populations, fair lending monitoring, supervision, and enforcement functions.

The information collected may be used to form policies and programs presented to state, local, and tribal governments, as well as to other federal agencies and the general public. Nearly all information collection will involve the use of electronic communication or other forms of information technology and telephonic means.

The Bureau received one comment letter on the proposed collection from a coalition of cities committed to local action for financial empowerment and consumer protection. The comment supported the Bureau's proposal to formalize processes for information collection from local governments, noting that the proposed information collection would maximize efficiency of information sharing and minimize burden on cities. The letter recommended that the Bureau set up protocols to solicit information and develop a mechanism for local governments to provide information to the Bureau. The letter further recommended that the Bureau offer cities a distinct communication channel through which cities can obtain information from the Bureau and inform regulatory or enforcement actions. The Bureau notes that this regular and structured solicitation of information may help mitigate the effects of future ruptures in consumer financial markets by helping to facilitate effective monitoring of local markets for risks to consumers.

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Responses: 1,600.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The Bureau issued a 60-day **Federal Register** notice on April 30, 2012, 77 FR 25438–39. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: August 17, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–20700 Filed 8–22–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Federal Student Aid; Student Assistance General Provisions—Student Right To Know

SUMMARY: The proposed changes to the current regulations require institutions to disclose the employment and placement rate, retention rate of first-time, full-time undergraduate students, and completion and graduation rate data disaggregated by gender, race, and grant or loan assistance in addition to the currently required reporting to prospective and enrolled students and employees.

DATES: Interested persons are invited to submit comments on or before October 22, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04924. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Student Right to Know.

OMB Control Number: 1845–0004.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 33,568.

Total Estimated Number of Annual Burden Hours: 244,179.

Abstract: Eligible participating post-secondary institutions are required to provide this Student Right-to-Know (SRK) information to all enrolled students, prospective students prior to their enrolling or entering into a financial obligation with the school as well as to institution's employees. This information pertains to the completion, graduation and post-graduate study rates for students at a given institution. This information must be made through publications, mailings and electronic media. The SRK information is made available so that students and prospective students can be aware of the ability of students at that institution to complete a course of study as well as find employment or continuing education opportunities upon graduation.

Dated: August 20, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–20775 Filed 8–22–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources, Research and Development Program 2012 Annual Plan

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of report availability.

SUMMARY: The Office of Fossil Energy announces the availability of the *2012 Annual Plan* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program on the DOE Web site at *www.fossil.energy.gov/programs/oilgas/ultra_and_unconventional/2012_annual_plan.pdf* or in print form (see ''Contact'' below).

The *2012 Annual Plan* is in compliance with the *Energy Policy Act of 2005, Subtitle J, Section 999B(e)(3)* which requires the publication of this plan and all written comments in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Mail Stop FE–30, 1000 Independence Avenue SW., Washington, DC 20585 or phone: (202) 586–5600 or email to *UltraDeepwater@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary [Excerpted From the 2012 Annual Plan p. iv]

This *2012 Annual Plan* is the sixth research plan for the *Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research Program* since the launch of the program in 2007.

This plan continues the important shift in priorities towards safety and environmental sustainability that was initiated in the last plan, and is consistent with the President's Office of Management and Budget directive for research that has significant potential public benefits.

Onshore, research on Unconventional Resources will focus on protecting groundwater and air quality, understanding rock and fluid interactions, and integrated environmental protection, including water treatment technologies and water management. For Small Producers, the Program will focus on extending the life of mature fields in an environmentally sustainable way.

Offshore, research on Ultra-Deepwater will focus on improved understanding of systems risk, reducing risk through the acquisition of real-time information

throughout the various systems, and reducing risk through the development of advanced technologies.

The research activities will be administered by the Research Partnership to Secure Energy for America (RPSEA), which operates under the guidance of the Secretary of Energy. RPSEA is a consortium which includes representatives from industry, academia, and research institutions. The expertise of RPSEA's members in all areas of the exploration and production value chain ensure that the Department of Energy's research program leverages relevant emerging technologies and processes, and that project results will have a direct impact on practices in the field.

Issued in Washington, DC on August 16, 2012.

Christopher A. Smith,

Deputy Assistant Secretary, Office of Oil and Natural Gas, Office of Fossil Energy.

[FR Doc. 2012–20788 Filed 8–22–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12429–007]

Clark Canyon Hydro, LLC; Notice of Application Accepted for Filing, Ready for Environmental Analysis, and Soliciting Comments, Motions To Intervene and Protests, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change transmission line route

b. *Project No.:* 12429–007.

c. *Date Filed:* May 31, 2012.

d. *Applicant:* Clark Canyon Hydro, LLC .

e. *Name of Project:* Clark Canyon Dam Hydroelectric Project.

f. *Location:* When constructed, the project will be located at the U.S. Department of the Interior, Bureau of Reclamation's Clark Canyon dam on the Beaverhead River, in Beaverhead County near the Town of Dillon, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Brent L. Smith, Chief Operating Officer, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442; telephone: (208) 745–0834

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and email address: *linda.stewart@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12429–007) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Clark Canyon Hydro, LLC (licensee) proposes to change the transmission line route authorized in the August 26, 2009 Order Issuing Original License. Instead of constructing a 0.3-mile-long, 24.9-kilovolt (kV) transmission line connecting the powerhouse to the local utility's existing transmission system as authorized in the license, the licensee proposes to construct a 7.9-mile-long, 69-kV transmission line connecting the powerhouse to Idaho Power Company's Peterson substation.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations or terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations or terms and conditions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities

of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20744 Filed 8–22–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–24–000]

R. Gordon Gooch v. Colonial Pipeline Company; Notice of Complaint

Take notice that on August 14, 2012, pursuant to section 13(1) of the Interstate Commerce Act (ICA) (49 App. U.S.C. 13(1) (1988)), Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) (18 CFR 385.206 (2012)), and section 343.2 of the Commission's regulations (18 CFR 343.2 (2012)), R. Gordon Gooch (Complainant) filed a formal complaint against Colonial Pipeline Company (Respondent) challenging the rates, terms, and conditions of Respondent's interstate transportation service in FERC Tariff Nos. 98.6.0,99.8.0, and 100.6.0, as set forth more fully in the complaint.

R. Gordon Gooch states that a copy of the Complaint has been served on the contact for the Respondent as listed on the Commission list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer, motions to intervene, and protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of protests and interventions to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket. For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 4, 2012.

Dated: August 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20745 Filed 8–22–12; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0347]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25-day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP085092XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of goods and services for the design and construction of an aquarium.

Brief non-proprietary description of the anticipated use of the items being exported:

Goods and services will be utilized for the construction of an aquarium which will serve as a tourist attraction and educational center.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: International Concept Management.

Obligor: State of Ceará, Federative Republic of Brazil.

Guarantor: Federative Republic of Brazil acting by and through the Ministry of Planning, Budget and Management.

Description of Items Being Exported: Design, engineering and construction services and related equipment for the construction of the aquarium.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before September 17, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *WWW.REGULATIONS.GOV.*

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–20728 Filed 8–22–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0346]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice of 25-day comment period regarding an application for final

commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP084837XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of a telecommunications satellite and associated equipment to Vietnam.

Brief non-proprietary description of the anticipated use of the items being exported:

To provide telecommunication services to Vietnam and the surrounding region.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provisions of services by a US industry.

Parties:

Principal Supplier: Lockheed Martin Corporation.

Obligor: Vietnam acting by and through the Ministry of Finance.

Guarantor(s): None.

Description of Items Being Exported: One telecommunications satellite and associated equipment.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before September 17, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–20731 Filed 8–22–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 22, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, federal government and state, local or tribal government.

Number of Respondents: 27,342 respondents; 27,342 responses.

Estimated Time per Response: 1.2962475 hours.

Frequency of Response: On occasion and 10 year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310 and 316.

Total Annual Burden: 35,442 hours.

Total Annual Cost: $810,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission is seeking OMB approval for revision of this information collection. There is a minor change to the Commission's previous burden estimates. The Commission is increasing the hourly burden by 200 hours and the annual cost by $50,000.

On August 3, 2012, the FCC adopted and released a *Backhaul Second Report and Order,* FCC 12–87, WT Docket No. 10–153, adopting a *Rural Microwave Flexibility Policy* directing the Commission's Wireless Telecommunications Bureau to favorably consider waivers of the payload capacity requirements if Fixed Service (FS) applicants demonstrate compliance with certain criteria, which is adding new reporting and recordkeeping requirements to this information collection.

In order to accommodate the consideration of waivers of the payload capacity of FS applicants pursuant to the *Rural Microwave Flexibility Policy* requirement, there is an increase in the total annual burden hours from 35,242 to 35,442 hours; an increase in the number of respondents and responses from 27,292 to 27,342; and an annual

cost increase from $760,000 to $810,000 because of the new respondents, i.e., Fixed Service (FS) operators who choose to file under the *Rural Microwave Flexibility Policy.* The Policy directs the Bureau to favorably consider waivers of the requirements for payload capacity of equipment if the applicants demonstrate equipment compliance with the following criteria:

- The interference environment would allow the applicant to use a less stringent Category B antenna (although the applicant could choose to sue a higher performance Category A antenna);
- The applicant specifically acknowledges its duty to upgrade to a Category A antenna and come into compliance with the applicable efficiency standard if necessary to resolve an interference conflict with a current or future microwave link pursuant to 47 CFR 101.115(c);
- The applicant uses equipment that is capable of readily being upgraded to comply with the applicable payload capacity requirement, and provide a certification in its application that its equipment complies with this requirement;
- Each end of the link is located in a rural area (county or equivalent having a population density of 100 persons per square mile or less);
- Each end of the link is in a county with a low density of links in the 4, 6, 11, 18 and 23 GHz bands;
- Neither end of the link is contained within a recognized antenna farm; and
- The applicant describes its proposed service and explains how relief from the efficiency standards will facilitate providing that service (e.g., by eliminating the need for an intermediate hop) as well as the steps needed to come into compliance should an interference conflict emerge.

There is no change to the existing third party disclosure requirements.

Additionally, Part 101 rule sections requires various information to be reported to the Commission; coordinated with third parties; posting requirements; notification requirements to the public; and recordkeeping requirements maintained by the respondent to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–20710 Filed 8–22–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (3064–0161)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before October 22, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (Insured State Nonmember Banks).

OMB Number: 3064–0161.

Affected Public: State nonmember banks.

Estimated Number of Respondents: 4522.

Number of frivolous or irrelevant dispute notices: 88,686.

Estimated burden per respondent:

24 hours to implement written policies and procedures and training associated with the written policies and procedures

8 hours to amend procedures for handling complaints received directly from consumers

8 hours to implement the new dispute notice requirement.

Estimated burden per frivolous or irrelevant dispute notice: 14 minutes.

Estimated Total Annual Burden Hours: 201,573 hours.

General Description of Collection: FDIC is required by section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 20th day of August 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–20778 Filed 8–22–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9:00 a.m. (Eastern Time), August 27, 2012.

PLACE: 10th Floor Board Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the July 23, 2012 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Executive Director
   a. Monthly Participant Activity Report
   b. Monthly Investment Performance Report
   c. Legislative Report
3. DoL/KPMG Audit Report
4. Communications Strategy Presentation
5. Personnel

Parts Closed to the Public

1. Procurement
2. Security
3. Personnel

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: August 21, 2012.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–20868 Filed 8–21–12; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075; Docket 2012–0076; Sequence 19]

Federal Acquisition Regulation; Submission for OMB Review; Government Property

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Government Property. A notice was published in the **Federal Register** at 76 FR 18497, on April 4, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 24, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0075 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0075''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0075'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0075.

Instructions: Please submit comments only and cite Information Collection 9000–0075, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Acquisition Policy, GSA (202) 501–1448 or email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Property, as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors. This clearance covers the following requirements:

(a) FAR 45.606–1 requires a contractor to submit inventory schedules.

(b) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(c) FAR 52.245–1(f)(1)(ii) requires contractors to receive, record, identify and manage Government property.

(d) FAR 52.245–1(f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract.

(e) FAR 52.245–1(f)(1)(iv) requires contractors to periodically perform, record, and report physical inventories during contract performance.

(f) FAR 52.245–1(f)(1)(vi) requires contractors to have a process to create and provide reports.

(g) FAR 52.245–1(f)(1)(viii) requires contractors to promptly disclose and report Government Property in its possession that is excess to contract performance.

(h) FAR 52.245–1(f)(1)(ix) requires contractors to disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(i) FAR 52.245–1(f)(1)(x) requires contractors to perform and report to the Property Administrator contract property closeout.

(j) FAR 52.245–1(f)(2) requires contractors to establish and maintain source data, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(k) FAR 52.245–1(j)(4) requires contractors to submit inventory disposal schedules to the Plant Clearance Officer.

(l) FAR 52.245–9(d) requires a contractor to identify the property for which rental is requested.

B. Annual Reporting Burden

The estimated number of respondents published in the **Federal Register** at 76 FR 18497, on April 4, 2011 was incorrectly stated at 4,875 rather than 14,875. This is corrected, and as a result, the estimated total burden hours is revised to 4,350,650. These estimated

total burden hours are lower than the previously approved estimated total burden hours of 6,226,350. The estimated total burden hours are lower because the amendments under FAR Case 2010–009 removed the requirement for Government approval of contractor scrap procedures, and submission of inventory schedules and scrap lists from a contractor without scrap procedurs, prior to allowing the contractor to dispose of ordinary production scrap. The practice unnecessarily burdened contractors that generated small amounts of scrap.

Number of Respondents: 14,875.

Responses per Respondent: 910.267.

Total Responses: 13,540,225.

Average Burden Hours per Response: .3213.

Total Burden Hours: 4,350,650.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755.

Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: August 17, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Govenrmentwide Policy.

[FR Doc. 2012–20741 Filed 8–22–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0892]

Agency Information Collection Activities; Proposed Collection; Comment Request; Communicating Composite Scores in Direct-to-Consumer Advertising

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, ''Communicating Composite Scores in Direct-to-Consumer (DTC) Advertising.'' This study is designed to explore how consumers understand and interpret composite endpoint scores in DTC ads.

DATES: Submit written or electronic comments on the collection of information by October 22, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Communicating Composite Scores in Direct-to-Consumer (DTC) Advertising—(OMB Control Number 0910–NEW)

I. Regulatory Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 903(b)(2)(c) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

II. Composite Scores

To market their products, pharmaceutical companies must demonstrate to FDA the efficacy and safety of their drugs, typically through well-controlled clinical trials (Refs. 1 and 2). In some cases, drug efficacy can be measured by a single endpoint, such as high blood pressure (Ref. 3). Often, however, efficacy is measured by multiple endpoints that are sometimes combined into an overall score called a composite score (Refs. 4 and 5). For example, nasal allergy relief is measured by examining individual symptoms such as runny nose, congestion, nasal itchiness, and sneezing. Each symptom is measured on its own. An overall score is computed from the individual symptom measurements; if a drug has a significantly better overall score than the comparison group (e.g., placebo), it can be marketed for the relief of allergy symptoms. However, although a drug may have a significantly better score overall, it may not have a significantly better score on a particular aspect (e.g., runny nose). Scientists and medical professionals have had training to understand the difference between composite score endpoints and single endpoints, but members of the general public may not understand the difference.

Given the frequency of DTC advertising, it is important to determine whether consumers understand composite scores as they are currently communicated and how best to communicate such scores to lay audiences in general. Because most DTC prescription drug ads do not explicitly state that they used composite scores to demonstrate efficacy or they provide little explanation of how these scores are calculated, it is also important to understand whether consumers

recognize how composite scores are used for measuring drug efficacy.

Prior research on composite scores is scant. Therefore, in September 2011, FDA conducted a focus group study to better understand how consumers understand the concept of composite scores. Prior to the focus group, few participants had heard the term ''composite score,'' none were aware of how the scores might be used in clinical trials, and most participants had difficulty correctly interpreting efficacy information that was based on composite scores. Once the moderator explained composite scores to participants, some reassessed their opinion of the advertised drug's effectiveness and said they thought that the information on effectiveness was ''much less convincing,'' in many cases because it was unclear whether the drug would work for a particular symptom. As a result, some participants said they would want a drug ad to include more detailed information on the effectiveness of the drug on each component of the composite score. However, others felt that the ads already provided enough information on effectiveness and that adding more statistical details would make the ads more complicated, thus decreasing the likelihood that consumers would read them.

The focus group findings suggest that research is required to examine how the inclusion of increasingly detailed information affects understanding of composite scores and influences perceptions of efficacy. This is especially important given the many marketed prescription drugs that are based on composite outcomes.

We are aware of no quantitative research on best practices for communicating composite score information to consumers. One related area of research, communicating health-related information to consumers, offers two practical recommendations that are particularly relevant to communicating composite scores in DTC advertisements. First, because less-numerate and less-literate consumers may not understand the information as well, examining differences in comprehension of composite scores by numeracy- and literacy-relevant demographic characteristics such as education level and age is important (Refs. 6 and 7). Second, although the literature tends to suggest limiting the amount of information presented in advertisements (Refs. 7 to 9), examining the amount of detail that best facilitates comprehension of composite scores is warranted.

III. Research Purpose

Given the lack of research on consumer understanding of composite scores and how to best present this information in DTC advertisements, the main goal of the current research is to evaluate how consumers interpret and respond to DTC prescription drug advertising that includes benefit information based on composite scores. Specifically, this research will explore:

1. Whether consumers are aware of how efficacy is measured for specific drugs;
2. How well consumers comprehend the concept of composite scores;
3. Whether exposure to DTC advertisements with composite endpoint benefit information influences consumers' perceptions of a drug's efficacy and risk; and
4. Different methods for presenting composite endpoint benefit information in DTC ads to maximize consumer comprehension and informed decisionmaking.

The research will be conducted in two studies. Using a general population sample of adults, the first study will be a web-based survey, with a pre-post design, that will explore consumers' awareness of how efficacy is measured for drugs and consumers' comprehension of the concept of composite scores. The second study will be a randomized, controlled study conducted online using a web-based panel to examine whether exposure to DTC advertisements with composite endpoint benefit information influences consumers' perceptions of a drug's efficacy and risk, and how DTC advertisements can best deliver composite endpoint benefit information to maximize consumer comprehension and informed decisionmaking. Questionnaires for both studies are available upon request.

IV. Design Overview

Study 1. In this phase, individuals in a general population sample of 1,600 adults of varying education levels will answer an Internet survey designed to explore whether consumers recognize composite scores in DTC ads and their understanding of composite endpoint scores. The survey will be conducted with a probability-based consumer panel of U.S. adults.

As part of the survey, participants will view a print ad that contains claims based on composite scores and respond to questions about the ad to assess whether they recognized that composite scores were used. Other outcomes will include ad comprehension, perceived efficacy, and perceived risk as they relate to their understanding of composite endpoint scores. We will also examine whether and in what ways participants' perceived efficacy and perceived risk change after they are given a definition and examples of composite scores. Questions will also explore consumers' understanding of how the effectiveness of drugs is measured in general.

This exploratory survey will not be used to test specific hypotheses. However, we will explore the differences in responses to the ad before and after information about composite scores is provided. We will also examine differences in the comprehension of the composite score concept and in the features of the ad by education level and age because literature suggests that less-educated and older consumers may not understand this type of information as well (Ref. 6).

Study 2. Unlike Study 1, Study 2 will be a randomized, controlled study. Study 2 will examine different ways to present the information that arises from a composite endpoint and different ways to explain the concept of a composite score (an educational intervention). Outcome measures will include consumers' awareness and comprehension of the composite score concept, perceived drug efficacy, and risk recall. Participants will be randomly assigned to experimental arms in a 3 x 2 design as shown in table 1.

TABLE 1—STUDY DESIGN FOR STUDY 2

	Information presentation			
Educational intervention	General indication	List of symptoms	Composite definition	Total
Absent	Arm 1 (n=267)	Arm 2 (n=267)	Arm 3 (n=267)	801
Present	Arm 4 (n=267)	Arm 5 (n=267)	Arm 6 (n=267)	801

TABLE 1—STUDY DESIGN FOR STUDY 2—Continued

	Information presentation			
Educational intervention	General indication	List of symptoms	Composite definition	Total
Total	534	534	534	1,602

This study will manipulate two variables: Three types of information presentations and the presence or absence of an educational intervention. In terms of information presentation, there are many aspects of composite endpoint scores that could be communicated and one research project cannot test them all. In this study, we have chosen to examine three different information presentations that may or may not help consumers understand the composite score concept. These different information presentations were chosen based on a review of the literature and a review of past DTC submissions.

The three different information presentations are described as follows:

General Indication. The first information presentation is the indication of the product. In this condition, participants will see the drug indication but will not see any explicit statement that the drug's benefits are based on a composite endpoint. This is a common way that composite scores are currently communicated. An example of this presentation is: ''Drug A treats and helps prevent seasonal nasal allergy symptoms.''

List of Symptoms. The next information presentation will include the drug indication and all of the symptoms that are used to make up the composite score. This condition, like the general indication condition, will not include an explicit statement referencing composite scores. This is also a common way that composite scores are currently communicated. An example of this presentation is: ''Drug A treats and helps prevent seasonal nasal allergy symptoms: Congestion, runny nose, nasal stuffiness, nasal itching, and sneezing.''

Composite Definition. The final information presentation will present the indication, describe that the drug's benefits are based on a composite endpoint, and explicitly define a composite score. To our knowledge, this would be a new way to communicate composite scores. An example of this presentation is: ''Drug A treats and helps prevent seasonal nasal allergy symptoms. Drug A's effectiveness is based on a composite score. A composite score is a single measure of how well a drug works based on a combination of factors. Drug A may not be as effective in addressing each factor individually.''

We will also manipulate whether or not participants see a specific educational intervention. This intervention was developed from prior focus groups (OMB Control No. 0910–0677) where it was found to resonate with participants. It will feature the decathlon as an educational example of a composite score. For example, ''Drug A's effectiveness is based on a composite score. A composite score is like a decathlon. In that event, athletes compete in 10 events, such as the long jump, the shot put, and the 50 yard dash. An athlete may not win all events, but if he or she wins some and performs well enough in others, he or she may be the winner based on a combination of scores for each event.''

We will test whether the educational intervention, the information presentation, and the interaction of the two affect outcomes such as consumers' awareness and comprehension of the composite score concept; perceived drug efficacy; and risk recall. We will test whether numeracy and literacy moderates any significant relations.

The sample for the second study will include approximately 1,602 participants who have been diagnosed with seasonal allergies. The protocol will take place via the Internet. Participants will be randomly assigned to view one print ad for a fictitious prescription drug that treats seasonal allergies and will answer questions about it. The entire process is expected to take no longer than 20 minutes. This will be a one-time (rather than annual) collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Screeners, Study 1	3,200	1	3,200	0.03 (2 minutes)	96
Pretest, Study 1	200	1	200	0.33 (20 minutes)	66
Main Survey, Study 1	1,600	1	1,600	0.33 (20 minutes)	528
Screeners, Study 2	3,400	1	3,400	0.03 (2 minutes)	102
Pretest, Study 2	600	1	600	0.33 (20 minutes)	198
Main Study, Study 2	1,602	1	1,602	0.33 (20 minutes)	529
Total	10,602				1,519

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The total respondent sample for this data collection is 10,602. For Study 1, we will sample 200 respondents for pretesting and 1,600 respondents for the full study. For Study 2, we will sample 600 respondents for pretesting and 1,602 participants for the full study. We estimate the response burden to be no more than 20 minutes, for a total burden, including screeners, of 1,519 hours.

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available

electronically at *http://www.regulations.gov*. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Lipsky, M.S. and L.K. Sharp, ''From Idea to Market: The Drug Approval Process,'' *Journal of the American Board of Family Practitioners,* vol. 14(5), pp. 362–367, 2001.

2. ''Guidance for Industry: Postmarketing Studies and Clinical Trials—Implementation of Section 505(o)(3) of the Federal Food, Drug, and Cosmetic Act,'' (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM172001.pdf*), 2008.

3. Rutan, G.H., R.H. McDonald, and L.H. Kuller, ''A Historical Perspective of Elevated Systolic vs. Diastolic Blood Pressure From an Epidemiological and Clinical Trial Viewpoint,'' *Journal of Clinical Epidemiology,* vol. 42(7), pp. 663–673, 1989.

4. Agency for Healthcare Research and Quality, ''Combining Measures Into Composite or Summary Scores,'' (*http://www.ahrq.gov/qual/perfmeasguide/*), 2012.

5. American Medical Association, ''Measures Development, Methodology, and Oversight Advisory Committee: Recommendations to PCPI Work Groups on Composite Measures,'' (*http://www.ama-assn.org/resources/doc/cqi/composite-measures-framework.pdf*), 2010.

6. Fagerlin, A. and E. Peters, ''Quantitative Information,'' In: B. Fishoff, N.T. Brewer, and J.S. Downs (Eds.), *Communicating Risks and Benefits: An Evidence-Based User Guide,* Food and Drug Administration, U.S. Department of Health and Human Services, (*http://www.fda.gov/About FDA/ReportsManualsForms/Reports/ucm268078.htm*), 2011.

7. Peters, E., D. Vastfijall, P. Slovic, et al., ''Numeracy and Decision Making,'' *Psychological Science,* vol. 17(5), pp. 407–413, 2006.

8. Gurmankin, A. D., J. Baron, and K. Armstrong, ''The Effects of Numerical Statements of Risk on Trust and Comfort With Hypothetical Physician Risk Communication,'' *Medical Decision Making,* vol. 24(3), pp. 265–271, 2004.

9. Edwards, A., R. Thomas, R. Williams, *et al.,* ''Presenting Risk Information to People With Diabetes: Evaluating Effects and Preferences for Different Formats by a Web-Based Randomized Controlled Trial,'' *Patient Education Counseling,* vol. 63, pp. 336–349, 2006.

Dated: August 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20783 Filed 8–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0246]

Kelly Dean Shrum: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Kelly Dean Shrum, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Shrum was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Dr. Shrum was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Shrum failed to respond. Dr. Shrum's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective August 23, 2012.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act.

On September 30, 2011, the U.S. District Court for the Eastern District of Arkansas entered judgment against Dr. Shrum for misbranding, a class A misdemeanor in violation of 21 U.S.C. sections 331(a), 333(a)(1), 352(c), and 352(f)(1), and health care fraud, a class C felony in violation of 18 U.S.C. sections 1347 and 2.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein for conduct relating to the regulation of a drug product. The factual basis for this conviction is as follows: Dr. Shrum was a licensed physician practicing in the state of Arkansas. Dr. Shrum offered gynecological and obstetric services to women, including providing forms of birth control. Dr. Shrum favored the intrauterine device (IUD) known as MIRENA, which was made for BHCP, Inc., by Bayer Schering Pharma OY (Bayer). The only version of MIRENA approved by FDA for marketing in the United States was approved on December 6, 2000, in New Drug Application 21–225.

From in or about June of 2009, in the Eastern District of Arkansas and elsewhere, Dr. Shrum purchased a foreign version of MIRENA for use in his patients that was not FDA-approved. The labeling of the unapproved IUD was not in English, and did not include adequate directions for use. Arkansas Center for Women, Ltd. was registered with the Arkansas Medicaid Program. Dr. Shrum was listed as the only physician affiliated with that clinic, and he signed the Medicaid provider contract on behalf of the Arkansas Center for Women. Dr. Shrum submitted claims to the Arkansas Medicaid Program under the clinic's provider number for the FDA-approved MIRENA IUD, which was specific to Bayer's FDA-approved product.

From on or about January 15, 2008 through on or about June 12, 2009, Dr. Shrum caused to be submitted claims for reimbursement to the Arkansas Medicaid Program, which included false representations. Specifically, he billed the Arkansas Medicaid Program as if he were administering the FDA-approved version of MIRENA, when he was actually administering a non-FDA approved IUD.

As a result of his convictions, on May 9, 2012, FDA sent Dr. Shrum a notice by certified mail proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Dr. Shrum was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

The proposal also offered Dr. Shrum an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. The proposal was received on May 11, 2012. Dr. Shrum failed to respond and has, therefore, waived his opportunity for a hearing and has waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to him (Staff Manual Guide 1410.35), finds that Kelly Dean Shrum has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Dr. Shrum is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see section 306(c)(1)(B) and (c)(2)(A)(ii) of the FD&C Act and section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Shrum in any capacity during Dr. Shrum's debarment, will be subject to civil money penalties (section 307(a)(6) of the Act (21 U.S.C. 335b(a)(6))). If Dr. Shrum provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act. In addition, FDA will not accept or review any abbreviated new drug applications from Dr. Shrum during his period of debarment (section 306(c)(1)(B) of the FD&C Act.

Any application by Dr. Shrum for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2012–N–0246 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 8, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–20784 Filed 8–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No: FDA–2012–N–0001]

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex scientific and technical issues important to the FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments including in regulatory science; and input into the Agency's research agenda; and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

DATES: *Date and Time:* The meeting will be held on Wednesday, October 3, 2012, from approximately 8:30 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm 1503), Silver Spring, MD 20993. For those unable to attend in person, the meeting will also be webcast. The link for the webcast is available at *https://collaboration.fda.gov/scienceboard/*. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm,* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Martha Monser, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4286, Silver Spring, MD 20993, 301–796–4627, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The Science Board will be presented with a draft charge to establish a new subcommittee to evaluate the Agency's continuing work to address the challenges identified in the Board's 2007 ''Science and Mission at Risk'' Report. The Science Board will be provided with updates from the Center for Devices and Radiological Health Research Review subcommittee and the Global Health subcommittee. The Science Board will also hear progress updates on nanotechnology and the ongoing activities in the priority areas outlined in the Strategic Plan for Regulatory Science. Overviews of genomics activities at the National Center for Toxological Research and the Center for Biologics Evaluation and Research will be presented. Finally, the recipients of the FY2012 Scientific Achievement awards (selected by the Science Board) will provide overviews of the activities for which the awards were given.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the

appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before Wednesday, September 26, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before Tuesday, September 18, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by Wednesday, September 19, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Martha Monser at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 17, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–20782 Filed 8–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting II.

Date: October 3–4, 2012,

Time: 3:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health Neuroscience Center 6001 Executive Boulevard Room A1/A2 Rockville, MD 20852.

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Boulevard, Room 8139 Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting III.

Date: October 10–11, 2012.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center 5701 Marinelli Road Bethesda, MD 20852.

Contact Person: Jeannette F. Korczak, Ph.D., Scientific Review Officer Research Programs Review Branch Division Of Extramural Activities National Cancer Institute, NIH 6116 Executive Blvd., Room 8115 Bethesda, MD 20892 301–496–9767, *korczakj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting IV.

Date: October 15–16, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville 1750 Rockville Pike Rockville, MD 20852.

Contact Person: Caterina Bianco, MD, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Blvd., Ste. 8134 Bethesda, MD 20892–8328, 301–496–7011, *biancoc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting V.

Date: October 18, 2012

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, DEA Conference Room 8018, Rockville, MD 20852.

Contact Person: Virginia P. Wray, Ph.D., Deputy Chief, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Blvd., Room 8125, Bethesda, MD 20892,–8328, 301–496–9236, *wrayv@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: August 17, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20690 Filed 8–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cancer and Lipids.

Date: September 13–14, 2012.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
*Place:*National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Reed A Graves, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group Hypertension and Microcirculation Study Section.
Date: September 17–18, 2012.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications
Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.
Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated:August 17, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20692 Filed 8–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topic: Biochemistry.
Date: August 27, 2012.
Time: 10:45 a.m. to 12:15 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: August 17, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20693 Filed 8–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

[C.F.D.A. Numbers: 93.566 and 93.584]

Notice of Change in Notification of Refugee Social Services and Targeted Assistance Formula Grant Allocations

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Notification of change.

SUMMARY: The Office of Refugee Resettlement, Administration for Children and Families (ACF), is changing the notification to States and Wilson/Fish Alternative Project grantees of final Social Services and Targeted Assistance formula grant awards. Under these two programs, formula grants are allotted to States based on the eligible population in each State. States and Wilson/Fish Alternative Project grantees use the grant awards to provide employment and other resettlement services to refugees, Amerasians, asylees, Cuban and Haitian entrants, victims of trafficking, and Iraqis and Afghans with Special Immigrant Visas.

Sections 412(c)(1)(B) and 412(c)(2)(A) of the Immigration and Nationality Act do not require applications for the Social Services and Targeted Assistance formula grant programs. ORR has the discretion to alter the process by which States and Wilson/Fish Alternative Project grantees are notified of their annual allocations. Therefore, in an effort to streamline the process, an annual Funding Opportunity Announcement (FOA) will no longer be published. Instead, in addition to annual publication of a notice in the **Federal Register**, ORR will now also post tables of the allocations and the population figures used to calculate the award amount on the ORR Web site. In addition, official notification of awards will be provided to States and Wilson/Fish Alternative Project grantees by ACF's Division of Mandatory Grants.

DATES: This change is effective immediately.

FOR FURTHER INFORMATION CONTACT: Henley Portner, Office of the Director, Office of Refugee Resettlement, (202) 401–5363, *Henley.Portner@acf.hhs.gov.*

Statutory Authority: Sections 412(c)(1)(B) and 412(c)(2)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)(1)(B) and (c)(2)(A)).

Eskinder Negash,

Director, Office of Refugee Resettlement.

[FR Doc. 2012–20798 Filed 8–22–12; 8:45 am]

BILLING CODE 4184–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Survey of State Underage Drinking Prevention Policies and Practices (OMB No. 0930–0316)—Revision

The *Sober Truth on Preventing Underage Drinking Act* (the ''STOP Act'')[1] states that the ''Secretary [of Health and Human Services] shall * * * annually issue a report on each State's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking.'' The Secretary has delegated responsibility for this report to SAMHSA. Therefore, SAMHSA has developed a *Survey of*

[1] Public Law 109–422. It is assumed Congress intended to include the District of Columbia as part of the State Report.

State Underage Drinking Prevention Policies and Practices (the ''*State Survey*'') to provide input for an *Annual Report on State Underage Drinking Prevention and Enforcement Activities* (the ''State Report''). The STOP Act also requires the Secretary to develop ''a set of measures to be used in preparing the report on best practices'' and to consider categories including but not limited to the following:

Category #1: Sixteen specific underage drinking laws/regulations enacted at the State level (e.g., laws prohibiting sales to minors; laws related to minors in possession of alcohol);

Category #2: Enforcement and educational programs to promote compliance with these laws/regulations;

Category #3: Programs targeted to youths, parents, and caregivers to deter underage drinking and the number of individuals served by these programs;

Category #4: The amount that each State invests, per youth capita, on the prevention of underage drinking broken into five categories: (a) Compliance check programs in retail outlets; (b) Checkpoints and saturation patrols that include the goal of reducing and deterring underage drinking; (c) Community-based, school-based, and higher-education-based programs to prevent underage drinking; (d) Underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and (e) Any other State efforts or programs that target underage drinking.

Congress' purpose in mandating the collection of data on State policies and programs through the *State Survey i*s to provide policymakers and the public with currently unavailable but much needed information regarding State underage drinking prevention policies and programs. SAMHSA and other Federal agencies that have underage drinking prevention as part of their mandate will use the results of the *State Survey* to inform Federal programmatic priorities. The information gathered by the *State Survey* will also establish a resource for State agencies and the general public for assessing policies and programs in their own State and for becoming familiar with the programs, policies, and funding priorities of other States.

Because of the broad scope of data required by the STOP Act, SAMHSA relies on existing data sources where possible to minimize the survey burden on the States. SAMHSA uses data on State underage drinking policies from the National Institute of Alcohol Abuse and Alcoholism's Alcohol Policy Information System (APIS), an authoritative compendium of State alcohol-related laws. The APIS data is augmented by SAMHSA with original legal research on State laws and policies addressing underage drinking to include all of the STOP Act's requested laws and regulations (Category #1 of the four categories included in the STOP Act, as described above, page 2).

The STOP Act mandates that the *State Survey* assess ''best practices'' and emphasize the importance of building collaborations with Federally Recognized Tribal Governments (''Tribal Governments''). It also emphasizes the importance at the Federal level of promoting interagency collaboration and to that end established the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD). SAMHSA has determined that to fulfill the Congressional intent, it is critical that the *State Survey* gather information from the States regarding the best practices standards that they apply to their underage drinking programs, collaborations between States and Tribal Governments, and the development of State-level interagency collaborations similar to ICCPUD.

SAMHSA has determined that data on Categories #2, #3, and #4 mandated in the STOP Act (as listed on page 2) (enforcement and educational programs; programs targeting youth, parents, and caregivers; and State expenditures) as well as States' best practices standards, collaborations with Tribal Governments, and State-level interagency collaborations *are not available from secondary sources* and therefore must be collected from the States themselves. The *State Survey* is therefore necessary to fulfill the Congressional mandate found in the STOP Act.

The *State Survey* is a single document that is divided into four sections, as follows:

(1) Enforcement of underage drinking prevention laws;

(2) Underage drinking prevention programs, including data on State best practices standards and collaborations with Tribal Governments;

(3) State interagency collaborations used to implement the above programs; and

(4) Estimates of the State funds invested in the categories specified in the STOP Act (see description of Category #4, above, page 2) and descriptions of any dedicated fees, taxes or fines used to raise these funds.

The number of questions in each Section is as follows:

Section 1: *31 questions*
Section 2A: *18 questions* [2]
Section 2B: *7 questions*
Section 2C: *6 questions*
Section 3: *12 questions*
Section 4: *17 questions*
TOTAL: *91 questions*

It is anticipated that respondents will actually respond to only a subset of this total. This is because the survey is designed with ''skip logic,'' which means that many questions will only be directed to a subset of respondents who report the existence of particular programs or activities.

This latest version of the survey has been revised slightly. While a few additional questions were added, a similar number of questions were deleted, so that the revised survey does not place any additional burden on States. All questions continue to ask only for readily available data.

The changes can be summarized as follows:

Part I

The revised version of the survey adds five sub-questions to Part I, which deals with enforcement. The sub-questions seek additional details about the information sought in the original questions. The data sought in the sub-questions are very similar to the data sought in the original questions and will likely be kept or stored in the same location by the same personnel., according to our interviews with respondents. Accordingly, answering these new sub-questions should require very little if any work on the part of respondents.

The question asking how local and State enforcement agencies coordinate their efforts to enforce underage drinking laws has been dropped.

A question has been added seeking an estimate of the number of retail licensees in the State, if readily available. This question was not asked in the previous version of the Survey, but it was determined that reliable data on the number of retail licensees is not available from another source.

Under the existing question regarding number of compliance checks/decoy operations conducted by the State alcohol law enforcement agency, two sub-questions have been added. One sub-question asks whether these compliance check/decoy operations are conducted at both on-sale and off-sale establishments, and the second sub-question asks whether the agency conducts random compliance check/

[2] Note that the number of questions in Sections 2A is an estimate. This Section asks States to identify their programs that are *specific* to underage drinking prevention. For each program identified there are six follow-up questions. Based on feedback from stakeholders and pilot testers, it is anticipated that States will report an average of three programs for a total of 18 questions.

decoy operation. If the answer is yes, the question asks for the number of licensees subject to random checks, and the number who failed.

Under the existing question asking for the total amount of fines imposed on retail establishments for furnishing alcohol to minors, a sub-question has been added requesting the dollar amounts of the smallest fine imposed and the largest fine imposed. Similarly, under the existing question asking for the total number of suspensions imposed on retail establishments for furnishing violations, a sub-question has been added asking the shortest and longest period of suspension, in days. These questions will help to establish the median for fines and days of suspension so as to provide a more accurate picture of enforcement efforts in the States.

Part II

In Part II, the question regarding ''specific'' underage drinking prevention programs and the question regarding ''related'' underage drinking prevention programs have been combined, and the references to ''specific'' and ''related'' have been eliminated. States no longer need to categorize their programs as one or the other and need only list their programs.

In the section asking for a description of each program, the existing survey asked for an estimate of how many youth, parents, and/or caregivers were served by the program. This section has been revised to ask whether the program is aimed at a specific, countable population, or the general population. For programs that are aimed at the general population, the question of how many youth, parents, and/or caregivers were served has been eliminated.

Also in the section asking for a description of each program, the existing survey asked for the time period for each program. This question has been eliminated.

The question on best practices has been clarified. A multiple choice answer has been added that asks for the source of the State's best practices standards: Federal agency(ies); State agency(ies); Non-governmental agency(ies), or Other [please describe].

To ensure that the *State Survey* obtains the necessary data while minimizing the burden on the States, SAMHSA has conducted a lengthy and comprehensive planning process. It has sought advice from key stakeholders (as mandated by the STOP Act) including hosting an all-day stakeholders meeting, conducting two field tests with State officials likely to be responsible for completing the *State Survey,* and investigating and testing various *State Survey* formats, online delivery systems, and data collection methodologies.

Based on these investigations, SAMHSA has decided to collect the required data using an electronic file distributed to States via email. The *State Survey* will be sent to each State Governor's office and the Office of the Mayor of the District of Columbia, for a total of 51 survey respondents. Based on the experience from the last two years of administering the *State Survey,* it is anticipated that the State Governors will designate staff from State agencies that have access to the requested data (typically State Alcohol Beverage Control [ABC] agencies and State Substance Abuse Program agencies). SAMHSA will provide both telephone and electronic technical support to State agency staff and will emphasize that the States are only expected to provide data that is readily available and are not required to provide data that has not already been collected. The burden estimate below takes into account these assumptions.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ response (hours)	Annual burden (hours)
State Questionnaire	51	1	17.7	902.7

Written comments and recommendations concerning the proposed information collection should be sent by September 24, 2012 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2012–20719 Filed 8–22–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Target Capacity Expansion grants for Jail Diversion Programs—(OMB No. 0930–0277)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) has implemented the Targeted Capacity Expansion Grants for Jail Diversion Programs, the Jail Diversion and Trauma Recovery Program represents the current cohort of grantees. The Program currently collects client outcome measures from program participants who agree to participate in the evaluation. Data collection consists of interviews conducted at baseline, six and twelve intervals, as well the collection of data on participants from existing program records.

The current proposal requests the continuation of the data collection instruments previously approved by OMB. The only revision requested is a reduction in the respondent burden hours.

The following tables summarize the burden for the data collection.

CY 2013 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden	Hourly rate	Total hour cost
Client Interviews for FY2008, FY2009, FY2010							
Baseline (at enrollment)	462	1	462	0.95	439	$7.25	$3,182
6 months	370	1	369	0.92	340	7.25	2,465
12 months	313	1	313	0.92	288	7.25	2,090
Sub Total	*1,145*		*1,145*		*1,067*		*7,737*
Record Management by FY2008, 2009, 2010 Grantee Staff							
Events Tracking	13	500	6,500	0.03	195	15	2,925
Person Tracking	13	50	650	0.1	36	15	540
Service Use	13	50	650	0.17	110.5	15	1,658
Arrest History	13	50	650	0.17	110.5	15	1,658
Sub Total	*52*		*8,450*		*452*		*6,780*
FY2008, FY2009, and FY2010 Grantees							
Interview and Tracking data submission	13	12	48	0.17	8	25	200
Overall Total	*1,210*		*9,643*		*1,527*		*17,642*

CY 2014 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden	Hourly rate	Total hour cost
Client Interviews for FY2009 and 2010 Grantees							
Baseline (at enrollment)	293	1	293	0.83	243.19	$7.25	$1,763
6 months	234	1	234.4	0.92	215.648	7.25	1,563
12 months	253	1	253	0.92	232.76	7.25	1,688
Sub Total	*780.4*		*780.4*		*692*		*5,014*
Record Management by FY2009 and FY2010 Grantee Staff							
Events Tracking	7	500	3,500	0.03	105	15	1,575
Person Tracking	7	50	350	0.1	36	15	540
Service Use	7	50	350	0.17	59.5	15	893
Arrest History	7	50	350	0.17	59.5	15	893
Sub Total	*28*		*4,550*		*260*		*3,900*
FY2009 and FY2010 Grantees							
Interview and Tracking data submission	7	12	48	0.17	8	25	200
Overall Total	*815*		*5,378*		*960*		*9,114*

ANNUALIZED REPORTING BURDEN

Data collection activity	Annualized number of respondents	Annualized total responses	Annualized total hour burden
Baseline (at enrollment)	378	378	243
6 months	302	302	278
12 months	283	283	260
Events Tracking	10	5,000	150
Person Tracking	10	500	36
Service Use	10	500	85
Arrest History	10	500	85

ANNUALIZED REPORTING BURDEN—Continued

Data collection activity	Annualized number of respondents	Annualized total responses	Annualized total hour burden
Interview and Tracking Data Submission	10	48	8
Total Annualized	*1,013*	*7,511*	*1,146*

Written comments and recommendations concerning the proposed information collection should be sent by September 24, 2012 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2012–20718 Filed 8–22–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by August 31, 2012. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (240) 276–1243.

Title: Monitoring of National Suicide Prevention Lifeline Form.

Frequency: Annually.

Affected public: Non-Profit Institutions.

SAMHSA is requesting an emergency extension for this data collection. The data collection expires on August 31, 2012 and the Agency has determined that this information must be collected beyond the expiration date. This information is essential to the mission of SAMHSA so that the Agency may monitor the extent to which crisis hotline networks are preventing suicides and saving lives.

SAMHSA cannot reasonably comply with the normal clearance procedures because an unanticipated event has occurred in that additional funds have become available this month to continue this important monitoring effort. This is ongoing monitoring and data collection, as such a disruption in the ability to collect this data would result in lost information.

This emergency request is to extend data collection activities of the Monitoring of National Suicide Prevention Lifeline Form (OMB No. 0930–0274). The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) funds a National Suicide Prevention Lifeline Network (NSPL), consisting of a two toll–free telephone number that routes calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources.

The overarching purpose of the this data collection is to continue to monitor calls and gather follow-up information from the callers themselves in order for SAMHSA to understand and direct their crisis hotline lifesaving initiatives.

Clearance is being requested to continue call monitoring and caller follow-up assessment activities; as well as the process (silent monitoring) and impact of motivational training and safety planning (MI/SP) with callers who have expressed suicidal desire (follow-up interviews with callers and counselors). These activities are enumerated below:

(1) To ensure quality, the vast majority of crisis centers conduct on-site monitoring of selected calls by supervisors or trainers using unobtrusive listening devices. To monitor the quality of calls and to inform the development of training for networked crisis centers, the national Suicide Prevention Lifeline proposes to remotely monitor calls routed to sixteen crisis centers during the shifts of consenting staff. The procedures are anonymous in that neither staff nor callers will be identified on the Call Monitoring Form. The monitor, a trained crisis worker, will code the type of problem presented by the caller, the elements of a suicide risk assessment that are completed by the crisis worker as well as what action plan is developed with and/or what referral(s) are provided to the caller. No centers will be identified in the reports.

During the shifts of consenting crisis staff, a recording will inform callers that some calls may be monitored for quality assurance purposes. Previous comparisons of matched centers that did and did not play the recordings found no difference in hang–up rates before the calls were answered or within the first 15 seconds of the calls.

(2) With input from multiple experts in the field of suicide prevention, a telephone interview survey was created to collect data on follow-up assessments from consenting individuals calling the Lifeline network. During year 1 of the proposed three year clearance period, a total of 1,095 callers will be recruited from 18 of the approximately 100 crisis hotline centers that participate in the Lifeline network. Trained crisis workers will conduct the follow-up assessment (''Crisis Hotline Telephone Follow-Up Assessment'') within one month of the initial call. Assessments will be conducted only one time for each client. Strict measures to ensure privacy will be followed. Telephone scripts provide potential participants with standardized information to inform their consent decision. Using the Crisis Hotline Telephone Initial Script, trained crisis counselors will ask for permission to have the staff re-contact the caller. The Crisis Hotline Telephone Consent Script, used at the time of re-contact, incorporates the required elements of a written consent form. The resulting data will measure (a) suicide risk status at the time and since the call, (b) depressive symptoms at follow-up, (c) service utilization since the call, (d) barriers to service access, and (e) the

client's perception of the efficacy of the hotline intervention.

(3) Call monitors, trained crisis counselors not affiliated with the centers in the project, will access a remote ''real-time'' monitoring system through the internet to conduct silent monitoring. Monitors will complete the ''MI/SP Silent Monitoring Form,'' to gather: (a) Call specifics for each call such as date, time, and length; (b) suicide risk status of the caller; (c) information on elements of safety planning, such as making the environment safe and identifying triggers that led to the caller's suicidality; (d) types of referrals the counselor gave and to what services; (e) ratings of counselor behaviors and caller behavioral changes that occurred; and (f) re-contact permission status. At the end of the call and once the counselor deems the intervention to be complete, counselors will ask all appropriate callers, using the MI/SP Caller Initial Script, for permission to be re-contacted by data collection staff for a follow-up interview. Only a caller whose call has been silently monitored is eligible to be followed by the data collection team; thus, counselors will state that the caller *may* be contacted by the data collection team if randomly selected for a follow-up call. Prior to monitoring and collecting of the data, crisis counselors must have read and signed a MI/SP Counselor Consent. This form explains the purpose of the data collection, privacy, risks and benefits, what the data collection entails, and participant rights.

(4) The ''MI/SP Counselor Attitude Questionnaire'' attitude questionnaire will be administered to counselors at the conclusion of their MI/SP training and be used as a possible predictor of fidelity of the MI//SP intervention. Information to be gathered includes (a) counselors' views of the applicability of the MI/SP for preparing them to conduct safety planning and follow up with callers; (b) possible anticipated challenges (i.e., impeding factors) to applying the MI/SP training in their centers; (c) the relationship of the MI/SP model to their centers; (d) the extent to which trainees are provided with or obtain adequate resources to enable them to use MI/SP on the job; (h) impeding and facilitating factors; and (9) attitudes about counselors' self-efficacy to use MI/SP and views on its utility.

(5) Counselors will be asked to complete the ''MI/SP Counselor Follow-up Questionnaire'' for each call that is monitored. The questionnaire will incorporate an assessment of the outreach, telephonic follow up and/or other strategies that the center has proposed to implement, and whether the counselor was able to implement the center's site plan as originally conceived. The questionnaire will also include items on the demographic characteristics of the caller, whether contact was successfully made with the caller, whether the caller followed through with the safety plan and/or referral given by the counselor, whether MI/SP was re-implemented during the follow-up contact, whether another follow-up is scheduled, the educational and crisis experience of the person attempting re-contact with the caller, and that person's prior experience with follow-up. Barriers to implementing the follow-up, as well as types of deviation from the site's follow-up plan will also be assessed. Open-ended questions about what led to deviations from the site's follow-up plan will also be included.

(6) Follow-up interviews will be conducted with callers approximately 6 weeks after the initial call to the center. This follow-up telephone interview (''MI/SP Caller Follow-up Interview'') will be conducted to collect information on demographic characteristics, gather caller feedback on the initial call made to the center, suicide risk status at the time of and since the call, current depressive symptomatology, follow through with the safety plan and referrals made by the crisis counselor, and barriers to service. Taking into account attrition and the number of callers who do not give consent, it is expected that the total number of follow-up interviews conducted by the data collection team will not exceed 885. The MI/SP Caller Initial Script protects the privacy of callers by asking the caller how and when they want to be contacted, and what type of message (if any) can be left on an answering machine or with the person picking up the telephone. The caller also has the option of not providing contact information to the crisis center if he/she prefers to call the data collection team back directly. The telephone script used when the data collection team contacts the participant for their follow-up interview (MI/SP Caller Follow-up Consent Script, see Attachment H) includes (1) the fact that the information collection is sponsored by an agency of the Federal Government, (2) the purpose of the information collection and the uses which will be made of the results, (3) the voluntary nature of participation, and (4) the extent to which responses will be kept private.

The estimated response burden to collect this information is as follows annualized over the requested three year clearance period is presented below:

TOTAL AND ANNUALIZED AVERAGES—RESPONDENTS, RESPONSES AND HOURS

Instrument	Number of respondents	Number of responses per respondent *	Total number of responses	Hours/ response	Response burden *
National Suicide Prevention Lifeline—Call Monitoring Form	10	44	440	.58	249
Crisis Hotline Telephone Initial Script	365	1	365	.08	29
Crisis Hotline Telephone Consent Script	365	1	365	.17	62
Crisis Hotline Telephone Follow–up Assessment	365	1	365	.67	245
MI/SP Silent Monitoring Form	10	37	370	.58	214
MI/SP Caller Initial Script	368	1	368	.08	29
MI/SP Caller Follow-up Consent Script	368	1	368	.17	63
MI/SP Caller Follow-up Interview	295	1	295	.67	198
MI/SP Counselor Consent	75	1	75	.08	6
MI/SP Counselor Attitudes Questionnaire	75	1	75	.25	19
MI/SP Counselor Follow-up Questionnaire	175	2	350	.17	89
Total	918		3,436		1,181

* Rounded to the nearest whole number.

Emergency approval is being requested to begin on August 31, 2012.

About four months after OMB approval, SAMHSA will publish a 60-Day **Federal Register** Notice to request comments during that period. SAMHSA encourages comments at anytime.

Summer King,

Statistician.

[FR Doc. 2012–20720 Filed 8–22–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0138]

Merchant Mariner Medical Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Mariner Medical Advisory Committee (MMMAC) will meet on September 25–26, 2012 to discuss matters relating to medical certification determinations for issuance of merchant mariner credentials, medical standards and guidelines for physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meeting will be open to the public.

DATES: MMMAC will meet on Tuesday, September 25, and Wednesday, September 26, 2012 from 8:00 a.m. to 5:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Paul Hall Center for Maritime Training and Education, 2nd floor conference room (Maryland Room), 45353 St. Georges Avenue, Piney Point, Maryland 20674–0075. Please be advised that in order to gain access to the Paul Hall Center, you must provide identification in the form of a government-issued picture identification card. If you plan to attend, please notify the individual listed in **FOR FURTHER INFORMATION CONTACT**, no later than September 14, 2012 so that administrative access into the Paul Hall Center can be processed prior to arrival.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Lieutenant Ashley Holm, the MMMAC Assistant Designated Federal Officer (ADFO), 202–372–1128 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing to the Coast Guard on or before September 14, 2012 and must be identified by USCG–2011–0138 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–372–1246.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please provide an electronic copy to the ADFO, no later than September 14, 2012, and it will be placed on the MMMAC Web site to be made available to the members of the committee and the public.

Docket: For access to the docket to read background documents or comments related to this notice, go to *http://www.regulations.gov.*

A public comment period will be held on September 25, 2012, from 9:35 a.m. to 10:05 a.m., and September 26, 2012 from 4:30 p.m. to 5:00 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific tasks and issues are discussed by the committee. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ashley Holm, the MMMAC ADFO, at telephone 202–372–1128 or email *Ashley.e.holm@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The MMMAC is authorized by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281) and the committee's purpose is to advise the Secretary on matters related to medical certification determinations for issuance of merchant mariner credentials; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research.

Agenda

Day 1, September 25

(1) Opening comments by Designated Federal Officer (DFO), Captain K. P. McAvoy.
(2) Remarks from Paul Hall Center staff representative.
(3) Introduction and swearing in of the new members.
(4) Review of Last Meeting's Minutes.
(5) Public Comments.
(6) Working Groups addressing the following task statements may meet to deliberate—
  (a) Task Statement 1, Revision of Navigation and Vessel Inspection Circular (NVIC) 04–08. The NVIC can be found at *http://www.uscg.mil/hq/cg5/nvic/.* Medical and Physical Guidelines for Merchant Mariner Credentials.
  (b) Task Statement 2, Top medical conditions leading to denial of mariner credentials.
  (c) Task Statement 4, Revising the CG–719K Medical Evaluation Report Form for mariner physicals. The form can be found at *http://www.uscg.mil/nmc.*
  (d) Task Statement 5, Creating medical expert panels for the top medical conditions.
  (e) Task Statement 6, Developing designated medical examiner program.

Day 2, September 26

(1) Working Group Discussions continued from Day 1.
(2) By mid-afternoon, the Working Groups will report, and if applicable, make recommendations for the full committee to consider for presentation to the Coast Guard. The committee may take official action on these recommendations on this date. The public will have

an opportunity to speak after each Working Group's Report before the full committee takes any action on each report.

(3) General public comments/ presentations.

(4) Closing remarks/plans for next meeting.

Dated: August 16, 2012.

J.A. Servidio,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2012–20705 Filed 8–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Columbia Inspection, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Columbia Inspection, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Columbia Inspection, Inc., 845 Marina Bay Parkway, Suite 8, Richmond, CA 94804, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Columbia Inspection, Inc., as commercial gauger and laboratory became effective on October 12, 2011. The next triennial inspection date will be scheduled for October 2014.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 13331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012–20762 Filed 8–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 2184 Jefferson Hwy, Lutcher, LA 70071, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on September 28, 2011. The next triennial inspection date will be scheduled for September 2014.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012–20770 Filed 8–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 2947 Duttons Mill Road, Suite A–1, Aston, PA 19014, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on May 08, 2012. The

next triennial inspection date will be scheduled for May 2015.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012–20769 Filed 8–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of the Strawn Group, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of The Strawn Group, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, The Strawn Group, 3855 Villa Ridge, Houston, TX 77068, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*.

DATES: The approval of The Strawn Group, as commercial gauger became effective on August 04, 2011. The next triennial inspection date will be scheduled for August 2014.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2012–20772 Filed 8–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 8367 Paris Ave., Baton Rouge, LA 70814, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on August 22, 2011. The next triennial inspection date will be scheduled for August 2014.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2012–20768 Filed 8–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003]

30-Day Extension of Call for Nominations for the U.S. Extractive Industries Transparency Initiative Advisory Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: On July 27, 2012, the United States Department of the Interior (DOI) published a request for nominees to be submitted by August 27, 2012. This **Federal Register** Notice extends the original nomination deadline by 30 days.

DATES: Nominations will be accepted through September 26, 2012.

ADDRESSES: You may submit nominations to the Committee by any of the following methods.

- Mail or hand-carry nominations to Ms. Shirley Conway; Department of the Interior; Office of Natural Resources Revenue; 1801 Pennsylvania Avenue NW, Suite 400; Washington, DC 20006.
- Email nominations to *Shirley.Conway@onrr.gov* or *EITI@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Shirley Conway, Office of Natural Resources Revenue; telephone (202) 254–5554; fax (202) 254–5589; email *Shirley.Conway@onrr.gov.* Mailing address: Department of the Interior; Office of Natural Resources Revenue; 1801 Pennsylvania Avenue NW., Suite 400; Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On July 27, 2012, the Department published in the **Federal Register** a notice of establishment of the United States Extractive Industries Transparency Initiative (USEITI) Multi-Stakeholder Group (MSG). This notice also included a request for nominees and comments under a standard 30-day period. In response to feedback and public requests, the Department is extending this period from 30 days to 60 days, ending September 26, 2012. If you have already submitted your nomination materials you will not need to resubmit.

Dated: August 20, 2012.

Paul A. Mussenden,

Deputy Assistant Secretary for Natural Resources Revenue Management.

[FR Doc. 2012–20793 Filed 8–22–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2012–N205; FXES11130800000–123–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before September 24, 2012.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 et seq.). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–78622A

Applicant: Cornelius W. Bouscaren, San Marcos, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–806679

Applicant: Spring Rivers Ecological Sciences, Cassel, California

The applicant requests an amendment to a permit to take (capture, weigh, mark, voucher, collect tissue, relocate, and release) the Shasta crayfish (*Pacifastacus fortis*) in conjunction with survey and research activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–78621A

Applicant: Lauren E. Ross, Walnut Creek, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–035336

Applicant: San Diego State University, San Diego, California

The applicant requests a permit to remove and reduce to possession from lands under Federal jurisdiction the *Amsinckia grandiflora* (large-flowered fiddleneck) in conjunction with propagation, restoration, and relocation activities in Contra Costa County, California, for the purpose of enhancing the species' survival.

Permit No. TE–14231A

Applicant: Caesara W. Brungraber, San Diego, California

The applicant requests an amendment to a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–79192A

Applicant: Dallas R. Pugh, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–76005A

Applicant: Tara Schoenwetter, Ventura, California

The applicant requests a permit to remove and reduce to possession from lands under Federal jurisdiction the *Deinandra increscens* subsp. *villosa* (Gaviota tarplant), *Cirsium loncholepis* (La Graciosa thistle), *Layia carnosa* (beach layia), *Nasturtium gambelii* (=*Rorippa g.*) (Gambel's watercress), *Arenaria paludicola* (Marsh sandwort), and *Eriodictyon capitatum* (Lompoc yerba santa) in conjunction with survey and plant collection activities at Vandenberg Air Force Base, Santa Barbara County, California, and Marine Corps Base Camp Pendleton in San Diego County, California; and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–67570A

Applicant: Brett A. Hanshew, Oakland, California

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (Sonoma County Distinct Population Segment) (*Ambystoma californiense*) and California tiger salamander (Santa Barbara County Distinct Population Segment) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–75988A

Applicant: Michael Hagar, San Diego, California

The applicant requests a permit to remove and reduce to possession from lands under Federal jurisdiction the following plant species in conjunction

with floristic surveys and botanical studies, and for conducting a herbarium program throughout the range of each species in California for the purpose of enhancing the species' survival:

Acanthoscyphus parishii var. *goodmaniana* (=*Oxytheca p.* var. *g.*) (Cushenbury oxytheca)

Acmispon dendroideus var. *traskiae* (=*Lotus d.* subsp. *t.*) (San Clemente Island broom)

Allium munzii (Munz's onion)

Ambrosia pumila (San Diego ambrosia)

Arctostaphylos glandulosa subsp. *crassifolia* (Del Mar manzanita)

Arenaria paludicola (Marsh sandwort)

Astragalus albens (Cushenbury milk-vetch)

Astragalus brauntonii (Braunton's milk-vetch)

Astragalus lentiginosus var. *coachellae* (Coachella Valley milk-vetch)

Astragalus pycnostachyus var. *lanosissimus* (Ventura Marsh milk-vetch)

Astragalus tener var. *titi* (coastal dunes milk-vetch)

Astragalus tricarinatus (triple-ribbed milk-vetch)

Atriplex coronata var. *notatior* (San Jacinto Valley crownscale)

Berberis nevinii (Nevin's barberry)

Castilleja grisea (San Clemente Island paintbrush)

Cercocarpus traskiae (Catalina Island mountain-mahogany)

Chloropyron maritimum subsp. *maritimum* (=*Cordylanthus maritimus* subsp. *maritimus*) (salt marsh bird's-beak)

Chorizanthe orcuttiana (Orcutt's spineflower)

Delphinium variegatum subsp. *kinkiense* (San Clemente Island larkspur)

Dodecahema leptoceras (=*Centrostegia l.*) (slender-horned spineflower)

Eriastrum densifolium subsp. *sanctorum* (Santa Ana River woolly-star)

Eriogonum ovalifolium var. *vineum* (cushenbury buckwheat)

Eryngium aristulatum var. *parishii* (San Diego button-celery)

Fremontodendron mexicanum (Mexican flannelbush)

Lithophragma maximum (San Clemente Island woodland-star)

Malacothamnus clementinus (San Clemente Island bush-mallow)

Monardella viminea (=*M. linoides* subsp. *v.*) (willowy monardella)

Orcuttia californica (California Orcutt grass)

Pentachaeta lyonii (Lyon's pentachaeta)

Physaria kingii subsp. *bernardina* (San Bernardino Mountains bladderpod)

Poa atropurpurea (San Bernardino bluegrass)

Pogogyne abramsii (San Diego mesa-mint)

Pogogyne nudiuscula (Otay mesa-mint)

Nasturtium gambelii (=*Rorippa g.*) (Gambel's watercress)

Sibara filifolia (Santa Cruz Island rockcress)

Sidalcea pedata (pedate checker-mallow)

Taraxacum californicum (California taraxacum)

Thelypodium stenopetalum (slender-petaled mustard)

Permit No. TE–38475A

Applicant: Jeff M. Lemm, San Diego, California

The applicant requests an amendment to a permit to take (survey, capture, handle, collect, transport, hold in captivity, display for zoological exhibition, captive breed, apply hormonal treatments, collect and perform cryopreservation of sperm, release to the wild, and euthanize individuals that are sick or have no reasonable prospect of being reintroduced to the wild for research) the mountain yellow-legged frog (southern California Distinct Population Segment) (*Rana muscosa*) in conjunction with research, captive breeding, and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–195891

Applicant: Justen Whittall, Santa Clara, California

The applicant requests an amendment to a permit to remove and reduce to possession from lands under Federal jurisdiction the *Erysimum teretifolium* (Ben Lomond wallflower) in conjunction with research activities in Santa Cruz County, California, for the purpose of enhancing the species' survival.

Permit No. TE–54716A

Applicant: Christine L. Harvey, San Diego, California

The applicant requests an amendment to a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–034101

Applicant: Naval Facilities Engineering Command Southwest, San Diego, California

The applicant requests an amendment to a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–76732A

Applicant: Jennifer L. Kendrick, Encinitas, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–80553A

Applicant: Aviva J. Rossi, San Anselmo, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus wootton*i), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Michael Long,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2012–20727 Filed 8–22–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N172; 40136–1265–0000–S3]

Laguna Cartagena National Wildlife Refuge, PR; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Laguna Cartagena National Wildlife Refuge (NWR) in Lajas, Puerto Rico. In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Mr. Oscar Díaz, P.O. Box 510, Boquerón, PR 00622. Alternatively, you may download the document from our Internet Site: *http://southeast.fws.gov/planning/* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Díaz, at 787/851–7258 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the refuge. We started this process through a **Federal Register** notice on May 16, 2007 (72 FR 27588).

We announce our decision and the availability of the final CCP and FONSI for Laguna Cartagena NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

Compatibility determinations for wildlife observation, wildlife photography, environmental education and interpretation, fishing, non-commercial harvesting of wild tropical fruits and plants, haying, research studies, wildlife surveying and monitoring, scientific collections, and camping (associated with environmental education, interpretation, and conservation projects) are available in the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on May 2, 2011 (76 FR 24511). Several comments were received.

Selected Alternative

We developed three alternatives for managing the refuge. After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative B for implementation. Under Alternative B, we will provide greater management of all habitats and associated plant communities. We will reintroduce native fish to the lagoon and actively support birds that are threatened, endangered, or of management interest, including West Indian whistling ducks and kestrels.

Under this alternative, specific activities that will be expanded or introduced will include: (1) Initiating surveys for bats, breeding birds, waterfowl, and species such as the Puerto Rican nightjar, yellow-shouldered black bird, and short-eared owl; (2) managing endangered plant populations, including *Aristida chaseae*; (3) constructing a plant nursery and increasing native vegetative planting in the uplands; (4) reducing the occurrence of exotic species; and (5) managing the lagoon's water quality and open-water restoration efforts.

Under this alternative, we will conduct historical/archaeological surveys of the entire refuge. Visitor services facilities and programs will be expanded. Specifically, improving parking areas, providing additional directional signs, improving and updating our refuge Web site, creating a refuge brochure, developing a trail system and an additional photo platform at La Tinaja, and increasing onsite environmental education programs and community interpretive programs will all be undertaken under this alternative. We will also work to expand our volunteer program. Additional staff, such as a biologist, biological technician, two engineering equipment operators, forestry technician (fire), park ranger or environmental education specialist, GIS specialist (shared with other refuges in Puerto Rico, and law enforcement officer (shared with Cabo Rojo National Wildlife Refuge), will be needed to implement this management action.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 31, 2011.

Mark J. Musaus,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on August 20, 2012.

[FR Doc. 2012–20723 Filed 8–22–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N171; 40136–1265–0000–S3]

Cabo Rojo National Wildlife Refuge, PR; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the

availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Cabo Rojo National Wildlife Refuge (NWR) in Boquerón, Puerto Rico. In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Mr. Oscar Díaz, P.O. Box 510, Boquerón, PR 00622. Alternatively, you may download the document from our Internet Site: *http://southeast.fws.gov/planning/* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Díaz, at 787/851–7258 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the refuge. We started this process through a **Federal Register** notice on March 12, 2007 (72 FR 11047).

We announce our decision and the availability of the final CCP and FONSI for Cabo Rojo NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

Compatibility determinations for access to sea fishing and fishermen facility; research, investigations, surveys, and monitoring; camping (associated with environmental education and interpretation, and conservation projects); commercial harvesting of sea salt; wildlife observation, wildlife photography, environmental education, and interpretation; bicycling, hiking, walking, and jogging; and haying are available in the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on May 2, 2011 (76 FR 24511). Several comments were received.

Selected Alternative

We developed three alternatives for managing the refuge. After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative C for implementation. We will place emphasis on improving habitat for wildlife. We will actively manage endangered plant populations, including *Aristida chaseae.* Activities to be expanded or introduced under this alternative will include: (1) Managing endangered plant populations and reducing the occurrence of exotic species; (2) exploring opportunities to control and manage water levels in the saltwater lagoons; (3) establishing and managing a new and larger nursery to increase reforestation of native tree species in upland areas; (4) restoring additional freshwater and saltwater ponds to increase avian habitat; (5) expanding the use of volunteers to increase habitat restoration activity; and (6) proactively expanding research collaboration with universities.

We will also provide greater support to our visitor services program, with emphasis on the following: (1) Developing a curriculum-based environmental education program; (2) expanding the role of our friends group, to include staff and interpretation services at the new visitor services center; (3) opening the new headquarters building in 2012; (4) reviewing and updating our brochures and Web site, including offering a Spanish version of the Web site; (5) updating our current kiosks and building new kiosks along the trail system; (6) expanding the volunteer program to also provide assistance with public use activities; (7) seeking and developing new partnerships, particularly with regard to trail maintenance; and (8) adding additional signage to clarify refuge uses.

Additional staff will be required to implement this alternative, including: biologist, biological technician, two engineering equipment operators, park ranger (environmental education), volunteer coordinator, GIS specialist, forestry technician, and law enforcement officer (to be shared with Laguna Cartagena National Wildlife Refuge).

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 23, 2011.

Mark J. Musaus,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on August 20, 2012.

[FR Doc. 2012–20724 Filed 8–22–12; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2907]

Certain Two-Way Global Satellite Communication Devices, System and Components Thereof; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Two-Way Global Satellite Communication Devices, System and Components Thereof,* DN 2907; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of BriarTek IP, Inc. on August 17, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain satellite communication devices, systems. The complaint names as respondents Delorme Publishing Company Inc. of ME; Delorme InReach LLC (d/b/a InReach LLC) of ME; and Yellowbrick Tracking Ltd. of UK.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2907'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: August 17, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20708 Filed 8–22–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2908]

Certain Sintered Rare Earth Magnets, Methods of Making Same and Products Containing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Sintered Rare Earth Magnets, Methods of Making Same and Products Containing Same,* DN 2908; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Hitachi Metals, Ltd. and Hitachi Metals North Carolina, Ltd. on August 17, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sintered rare earth magnets, methods of making same and products

containing same. The complaint names as respondents Yantai Zhenghai Magnetic Material Co., Ltd. of China; Ningbo Jinji Strong Magnetic Material Co., Ltd. of China; Earth-Panda Advance Magnetic Material Co., Ltd. of China; Skullcandy, Inc. of CA; Beats Electronics, LLC of CA; Monster Cable Products, Inc. of CA; Bose Corp. of MA; Callaway Golf Co. of CA; Taylor Made Golf Co. of CA; Adidas America, Inc. of OR; Milwaukee Electric Tool Corp. of WI; Techtronic Industries Co. Ltd. of Hong Kong; DeWALT Industrial Tool Corp. of MD; Electro-Voice, Inc. of MN; Shure Inc. of IL; AKG Acoustics GmbH of Austria; Harman International Industries of CT; Maxon Precision Motors, Inc. of MA; Dr. Fritz Faulhaber GmBH & Co. KG of Germany; Micromo Electronics, Inc. of FL; TELEX Communications, Inc. of MN; Bosch Security Systems, Inc. of MN; Elecrtro-Optics Technology, Inc. of MI; Nexteer Automotive Corp. of MI; Bunting Magnetics Co., of KS; Viona Corp. of NY; Allstar Magnetics LLC of WA; Dura Magnetics Inc. of OH; and Integrated Magnetics, Inc. of CA.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2908'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 17, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20709 Filed 8–22–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 17, 2012, a proposed consent decree in *U.S.* v. *Estate of Lillian Wiesner, et al.,* No. CV–05–1634, was lodged with the United States District Court for the Eastern District of New York.

In this action the United States seeks recovery, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* of response costs regarding the Stanton Cleaners Area Groundwater Superfund Site in the Town of Great Neck, N.Y. (''Site''). The settlement provides for the defendants Weisner Estate and John P. Maffei to cause to be paid to the United States a total of $756,000. The settlement also provides for defendant Weisner Estate to sell the property upon which the Site is located and to pay the United States 92% of the proceeds of such sale, which payment is expected to total approximately $2.024 million. The settlement resolves the United States' claims against the defendants regarding the Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Estate of Lillian Wiesner, et al.,* D.J. Ref. 90–11–3–08416.

During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*eescdcopy.enrd@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy of the settlement from the Consent Decree Library by mail, please enclose a check in the amount of $11.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent

Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–20707 Filed 8–22–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Sixth Amendment to Consent Decree Pursuant to The Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on August 20, 2012, a proposed Sixth Amendment To Consent Decree in *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD, was lodged with the United States District Court for the District of Wyoming.

The proposed Sixth Amendment To Consent Decree would resolve the United States' and State of Wyoming's claims that the Sinclair Wyoming Refining Company (''SWRC'') and the Sinclair Casper Refining Company (''SCRC'') violated certain provisions of the 2008 Consent Decree in *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD. Under the terms of the Sixth Amendment To Consent Decree, SWRC and SCRC will both install additional pollution control equipment to enable compliance with requirements of the 2008 Consent Decree and take other action to offset emissions that resulted from the alleged violations.

The Department of Justice will receive comments relating to the proposed consent decree amendment for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD, and Department of Justice Reference No. 90–5–2–1–07793.

During the public comment period, the consent decree amendment may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $15.00 ($.25 per page) if exhibits are requested or $3.00 if exhibits are not requested, payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–20781 Filed 8–22–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Verizon Communications Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America et al.* v. *Verizon Communications Inc. et al.,* Civil Action No. 1:12–cv–01354. On August 16, 2012, the United States filed a Complaint alleging that the proposed commercial agreements among Verizon Communications Inc., Cellco Partnership d/b/a Verizon Wireless, Comcast Corporation, Time Warner Cable Inc., Cox Communications, Inc., and Bright House Networks, LLC, would violate Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires modifications to the commercial agreements and prohibits certain conduct in order to preserve the incentive and ability for Verizon Communications to compete aggressively with each of the cable companies.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Lawrence M. Frankel, Assistant Chief, Telecommunications and Media Enforcement Section, Antitrust Division, Department of Justice, Washington, DC 20530, telephone: 202–514–5621.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 450 5th Street, N.W., Suite 7000, Washington, DC 20530, and STATE OF NEW YORK, Office of the Attorney General, 120 Broadway, New York, NY 10271, Plaintiffs, v. VERIZON COMMUNICATIONS INC., 140 West Street, 29th Floor, New York, NY 10007; CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS, One Verizon Way, Basking Ridge, NJ 07920; COMCAST CORPORATION, One Comcast Center, Philadelphia, PA 19103; TIME WARNER CABLE INC., 60 Columbus Circle, New York, NY 10023; COX COMMUNICATIONS, INC., 1400 Lake Hearn Drive, Atlanta, GA 30319, and BRIGHT HOUSE NETWORKS, LLC, 5000 Campuswood Drive, East Syracuse, NY 13057, Defendants.	Civil Action No.: Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of New York, acting under the direction of its Attorney General (collectively, ''Plaintiffs''), bring this civil antitrust action against Defendants Verizon Communications Inc. (''Verizon''); CellCo Partnership d/b/a Verizon Wireless (''Verizon Wireless''; collectively with Verizon, ''Verizon Defendants''); Comcast Corporation (''Comcast''); Time Warner Cable Inc. (''Time Warner Cable''); Cox Communications, Inc. (''Cox''); and Bright House Networks, LLC (''Bright House Networks''; collectively with Comcast, Time Warner Cable, and Cox, ''Cable Defendants'') to obtain equitable relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Plaintiffs allege as follows:

I. INTRODUCTION

1. In December 2011, Verizon Wireless and the Cable Defendants entered into a series of commercial agreements (the ''Commercial Agreements'') that allow them to sell bundled offerings that include Verizon Wireless services and a Cable Defendant's residential wireline voice, video, and broadband services, including ''quad-plays.'' In addition, the Commercial Agreements allow the Defendants to develop integrated wireline and wireless telecommunications technologies through a research and development joint venture.[1]

2. In certain parts of the country, Verizon, which is Verizon Wireless's parent, offers fiber-based voice, video, and broadband services under the trade name ''FiOS.'' Verizon sells its wireline FiOS services in several geographic areas where one of the Cable Defendants also sells wireline voice, video, and broadband services, including parts of New York City, Philadelphia, and Washington, DC. In those areas of geographic overlap, the Commercial Agreements would result in Verizon Wireless retail outlets selling two competing quad-play offerings: one including Verizon Wireless services and a Cable Defendant's services and the other including Verizon Wireless services and Verizon FiOS services. In addition to setting up this unusual structure where one part of the Verizon corporate family (Verizon Wireless) must sell products in competition with another (Verizon Telecom), the Commercial Agreements contain a variety of mechanisms that are likely to diminish Verizon's incentives and ability to compete vigorously against the Cable Defendants with its FiOS offerings, and they create an opportunity for harmful coordinated interaction among the Defendants regarding, among other things, the pricing of competing offerings.

3. The Commercial Agreements also harm the Defendants' long-term incentives to compete insofar as they create an exclusive sales and product development partnership of potentially unlimited duration. Innovation and technological change mark the telecommunications industry, but the Commercial Agreements fail to reasonably account for such change and instead freeze in place relationships that, in certain aspects, may be harmful in the long term. For an unlimited term, the Cable Defendants collectively are restricted to one wireless partner, Verizon Wireless, and the participants in the joint technology venture are restricted to that forum—and limited to working with the partners in that venture—for integrated wireline and wireless product development. Moreover, Verizon Wireless's ability to sell Verizon's FiOS product is restricted to the currently planned FiOS footprint, even if in future years Verizon contemplates further FiOS expansion. Exclusive sales partnerships and research and development collaborations between rivals that have no end date can blunt the long-term incentives of the Defendants to compete against each other, and others, as the industry develops.

4. Through this suit, the United States and the State of New York ask this Court to declare the Defendants' Commercial Agreements illegal and enter injunctive relief to prevent and remedy violations of the antitrust laws.

II. DEFENDANTS

5. Verizon Communications Inc. is a Delaware corporation headquartered in New York. Verizon's consumer wireline segment, Verizon Telecom, is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

6. Cellco Partnership d/b/a Verizon Wireless is a Delaware general partnership headquartered in New Jersey, and is the nation's largest provider of wireless services. Verizon Wireless is a joint venture owned by Verizon Communications Inc. (55%) and Vodafone Group Plc (45%), but is operated and managed by Verizon Communications.

7. Comcast Corporation is a Pennsylvania corporation headquartered in Pennsylvania. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

8. Time Warner Cable Inc. is a Delaware corporation headquartered in New York. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

9. Cox Communications, Inc. is a Delaware corporation headquartered in Georgia. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

10. Bright House Networks, LLC is a Delaware limited liability company headquartered in New York. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

III. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

11. Plaintiff United States of America brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain the Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12. Plaintiff the State of New York, by and through its Attorney General and other authorized officials, brings this action in its sovereign capacity and as parens patriae on behalf of the citizens, general welfare, and economy of the State of New York under its statutory, equitable, and common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent the Defendants from violating Section 1 of the Sherman Act.

13. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

14. Each Defendant is engaged in interstate commerce and in activities that substantially affect interstate trade and commerce. The Cable Defendants and Verizon each sell broadband and video services in their respective regional footprints across the United States, and Verizon Wireless sells wireless services throughout the United States.

15. Each Defendant has consented to personal jurisdiction and venue in this judicial district.

IV. FACTUAL BACKGROUND

16. Residential voice, video, and broadband services are commonly purchased together in bundles with one another. For example, Verizon offers a triple-play bundle of voice, video, and broadband FiOS services, and over 90% of FiOS customers subscribe to some form of bundle. Similarly, over 60% of Comcast customers subscribe to some form of bundle.

17. Bundles are typically offered by providers that themselves provision each component service. However, some providers that cannot supply each component service partner with complementary providers to bundle their services in the marketplace.

18. Today, most consumers do not purchase wireless services in bundles including residential voice, video, and broadband services. For instance, Verizon sells some quad-play offerings in its FiOS territory, but its sales of quad-play bundles pale in comparison to the number of triple-play bundles it sells.

19. Technological developments, such as the advent of the smartphone and the increasing availability of and demand for streaming video content, have the potential to increase demand for integrated wireline and wireless services.

20. The Commercial Agreements enable the Defendants to offer bundles combining wireline and wireless services, including in many local markets where they are unable to do so on their own because they do not themselves sell all of the constituent services.

[1] At the same time that they negotiated the Commercial Agreements, the Cable Defendants agreed to sell to Verizon Wireless a significant number of wireless spectrum licenses that they purchased in 2006 but have not used. In June 2012, Verizon Wireless agreed to resell some of that spectrum to T-Mobile USA, the smallest of the nation's four nationwide wireless carriers. Plaintiffs are not here challenging those spectrum-related agreements, which facilitate the active use of an important national resource.

21. Specifically, in December 2011, Verizon Wireless and the Cable Defendants entered into a series of Commercial Agreements, which in combination (1) allow them to sell each other's services; (2) create a structure for them to develop new products and services that integrate wireline and wireless services; and (3) create a future option for the Cable Defendants to operate a virtual wireless network using Verizon Wireless's network:

a. On December 2, 2011, (1) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; (2) Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks entered into a Joint Operating Entity agreement (''the JOE'') to collectively develop and market integrated wireline and wireless products; and (3) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into ''Reseller'' agreements to provide Comcast, Time Warner Cable, and Bright House Networks the option to operate a virtual wireless network using Verizon Wireless assets; and

b. On December 16, 2011, defendants Verizon Wireless and Cox entered into (1) reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; and (2) a ''Reseller Agreement'' to provide Cox with the option to operate a virtual wireless network using Verizon Wireless assets.

22. Provisions in the Commercial Agreements require Verizon Wireless to sell the Cable Defendants' products even where Verizon has its own directly competing FiOS products. Under these provisions, Verizon Wireless must sell the Cable Defendants' video and broadband services through its sales channels. Verizon currently uses a significant number of Verizon Wireless stores to sell FiOS. Under related provisions of the Commercial Agreements, Verizon Wireless is to receive a commission for each sale of one of the Cable Defendants' products, even in regions where Verizon offers competing FiOS services.

23. The Commercial Agreements also contain an explicit restraint on Verizon FiOS sales, providing that Verizon Wireless may only sell FiOS services if it also offers the Cable Defendants' services on an ''equivalent basis.'' The ''equivalent basis'' provision limits Verizon's ability to offer, promote, market, and sell FiOS services in competition with the Cable Defendants' services through any Verizon Wireless distribution channel.

24. The Commercial Agreements also contain an exclusivity provision that prohibits the Cable Defendants from partnering with any other wireless services company. Moreover, although the Commercial Agreements allow the Cable Defendants eventually to resell wireless services using Verizon Wireless's network under their own brands, the Cable Defendants must wait four years before they can do so.

25. The Commercial Agreements create the Joint Operating Entity (''the JOE''), a joint venture to develop and market integrated wireline and wireless technologies. The JOE is to serve as its members' exclusive vehicle for research and development of certain wireline and wireless products: While they remain in the JOE, Defendants Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks cannot independently conduct any research and development on subjects within the JOE's exclusive field, even on projects that the JOE declines to pursue.

26. The Commercial Agreements are potentially unlimited in duration. The Agent agreements have an initial five-year term, which renews automatically for another five-year term, and is subject to automatic renewals every five years thereafter. The JOE agreement has no fixed expiration.

V. RELEVANT MARKETS

27. Video providers acquire the rights to transmit video content (e.g., broadcast and cable programming networks, television series, individual programs, or movies), aggregate that content, and distribute it to their subscribers or users. The distribution of professional video programming services to residential customers (''video services'') is a relevant product market.

28. Consumers purchasing video services select from among those firms that can offer such services directly to their home. Although direct broadcast satellite and online video services can serve customers across the United States, wireline video providers such as the Cable Defendants and Verizon are only able to offer services where they have, with the requisite approvals from local authorities, built out their networks to homes in a particular area. Thus the relevant geographic markets for video services include the local markets throughout the United States where Verizon offers, or is likely soon to offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of video services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

29. Residential broadband Internet services providers connect residential customers' electronic devices to the Internet at high speeds and in high data volumes, typically for a monthly fee. These services allow customers to access content containing large quantities of data, such as high-quality streaming video, gaming, applications, and various forms of interactive entertainment. The provision of broadband Internet services to residential customers (''broadband services'') is a relevant product market.

30. Consumers purchasing broadband services select from among those firms that can offer such services directly to their home. The relevant geographic markets for broadband services include the local markets throughout the United States where Verizon offers, or is likely soon to offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of broadband services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

31. Mobile wireless telecommunications services providers allow customers to engage in telephone conversations and obtain data services using radio transmissions without being confined to a small area during a call or data session and without requiring an unobstructed line of sight to a radio tower. Mobile wireless telecommunications services include both voice and data services (e.g., texting and Internet access) provided over a radio network and allow customers to maintain their telephone calls or data sessions wirelessly when travelling. The provision of mobile wireless services (''wireless services'') is a relevant product market.

32. Consumers typically purchase wireless services from providers that offer and market services where they live, work, and travel on a regular basis, and nationwide competition among wireless services providers affects those local markets. The relevant geographic markets for wireless services include the local markets throughout the United States where Verizon offers wireless services and the Cable Defendants offer wireline services. A small but significant price increase by a hypothetical monopolist of wireless services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

VI. THE CABLE DEFENDANTS' MARKET POWER

33. The Cable Defendants are dominant in many local markets for both video and broadband services, with a reported national market share for incumbent cable companies of greater than 50% for both broadband and video services, although their shares may be higher or lower in any particular local market for any particular service. Each Cable Defendant has market power in numerous local geographic markets for both broadband and video services.

34. The concentrated nature of both the broadband and video services product markets, and the Cable Defendants' market power, are largely due to historical factors. In most geographic areas, the local cable network was originally constructed pursuant to a local franchise agreement that gave the cable carrier exclusive rights to provide service in that area in exchange for a commitment to build out broad cable coverage. The copper-wire telephone network was the only other telecommunications infrastructure built out to most households, and it too was subject to an exclusive license. For decades, the telephone companies were not permitted to offer cable services, and vice versa.

35. The Telecommunications Act of 1996 (the ''Act'') was intended to foster enhanced competition between the telephone companies and the cable companies. Among other changes to national telecommunications policy, the Act removed regulatory constraints on competition between the telephone and cable companies in each other's markets.

36. In 2005, Verizon began offering FiOS services over its newly constructed fiber-optic network. FiOS has been, and remains, a significant competitive threat to cable in the regions where it has been built. As Verizon has expanded FiOS to cover many millions of households, it has consistently

won significant market share in both broadband and video in the local markets where it offers those services. Verizon is still expanding FiOS, as it has additional build obligations pursuant to a number of local franchise agreements it signed with cities and counties in order to obtain the rights to provide local video services.

37. Well before entering into the Commercial Agreements, Verizon publicly announced its decision not to invest in further FiOS expansion beyond its obligated builds. Verizon's business plans with respect to future FiOS expansion have not changed significantly since it entered into the Commercial Agreements. Nonetheless, Verizon still considers, from time to time, whether to invest further in the expansion of its FiOS infrastructure. Its decision whether to do so will be affected by, among other things, whether technological or business conditions become more conducive to additional buildout in future years.

VII. ANTICOMPETITIVE EFFECTS

38. The Commercial Agreements, and in particular the following provisions thereof, harm competition in the markets for the provision of video and broadband services (and competition to provide bundles that include those products) in the areas in which Verizon's FiOS territory overlaps with the wireline territory of a Cable Defendant because they impair the ability and incentives for Verizon and the Cable Defendants to compete aggressively against each other:

a. Verizon is restrained from marketing or selling FiOS in Verizon Wireless stores unless it also sells a Cable Defendant's services on an ''equivalent basis.'' This restriction reduces Verizon's ability and incentives to compete aggressively against the Cable Defendants' products and facilitates anticompetitive coordination among the Defendants.

b. Verizon Wireless is required to sell each Cable Defendant's services in direct competition with FiOS, and Verizon Wireless is to receive a commission for each such sale. This requirement reduces Verizon's incentives and ability to compete aggressively against the Cable Defendants with FiOS and facilitates anticompetitive coordination among the Defendants.

39. The Commercial Agreements diminish the incentives and ability of Verizon and the Cable Defendants to compete in those areas where the Cable Defendants' territories overlap with those in which Verizon has built, or is likely to build, FiOS infrastructure. They transform the Defendants' relationships from ones in which Verizon and the Cable Defendants are direct, horizontal competitors to ones in which they are also partners in the sale of the Cable Defendants' services. Rather than having an unqualified, uninhibited incentive and ability to promote its FiOS video and broadband products as aggressively as possible, Verizon will be contractually required and have a financial incentive to market and sell the Cable Defendants' products through Verizon Wireless channels in the same local geographic markets where Verizon also sells FiOS. The Commercial Agreements deprive Verizon of the ability to exploit fully a valuable marketing channel and alter Verizon's incentives with respect to pricing, marketing, and innovation. They unreasonably diminish competition between Verizon and the Cable Defendants—competition that is critical to maintaining low prices, high quality, and continued innovation.

40. The Commercial Agreements also unreasonably diminish future incentives to compete for product and feature development pertaining to the integration of broadband, video, and wireless services. Although the JOE technology joint venture has the potential to produce useful innovations that benefit consumers, the JOE has a potentially unlimited duration, and it contains restrictions on its members' ability to innovate outside of the JOE. These aspects of the JOE agreement unreasonably reduce the Defendants' incentives and ability to compete on product and feature development, and create an enhanced potential for anticompetitive coordination.

41. The Commercial Agreements also unreasonably diminish the Cable Defendants' incentives and ability to pursue in the future—as they have in the past—their own wireless services offerings for their customers who want a bundle including such services. Although the agreements permit the Cable Defendants eventually to act as wireless competitors using Verizon Wireless's network at least in part, the Cable Defendants are explicitly prohibited from doing so for the first four years of the agreements, and meanwhile they may only offer Verizon Wireless services as sales agents. Whereas most wireless resellers do not serve as a significant competitive constraint on facilities-based providers, the Cable Defendants have extensive network facilities and other commercial advantages that could enhance their relevance as competitors, and they have explored how to leverage those assets to their advantage. A four-year delay in the ability of the Cable Defendants to develop their own wireless offerings, relying in part on Verizon Wireless's network, diminishes the incentive to invest in potential wireless offerings and inhibits the ability to bring those offerings to market in a timely manner.

42. The Commercial Agreements also unreasonably restrain future competition for the sale of broadband, video, and wireless services to the extent that the availability of these services as part of a bundle, including a quad-play bundle, becomes more competitively significant. Although the exclusivity provisions of the agreements may be reasonably necessary to bind the parties into a cooperative relationship for the next several years, the unlimited duration of the wireless exclusivity is unreasonable and unnecessarily restrains competition in the long term, when partnerships between the Cable Defendants and other wireless providers can serve as an important source of competition for the sale of integrated wireline and wireless bundles. Should the ability to offer integrated bundles develop into an important characteristic of competition, these agreements would unreasonably prevent wireless carriers from offering those bundles with the most significant providers of broadband and video services. The reduction in future competition to offer bundled products would result in harm in the markets for each constituent product.

43. The Commercial Agreements also significantly and adversely affect Verizon's long-term competitive incentives to reconsider, in future years, its pre-existing decision not to build out FiOS beyond its current commitments. Although Verizon's current plans do not contemplate additional FiOS buildout beyond the currently obligated areas—and therefore significant additional buildout is unlikely for at least the next several years—developments in the technology and economics of FiOS deployment, or macroeconomic changes, may cause Verizon to re-evaluate the possibility of additional buildout. The requirement and financial incentives for Verizon Wireless to sell the Cable Defendants' services, combined with the unlimited duration of the Commercial Agreements, creates a disincentive to additional buildout in areas within Verizon's wireline territory but outside the currently planned FiOS footprint, particularly in those Verizon DSL territories in which buildout might be most profitable.

44. The Commercial Agreements also unreasonably restrain competition due to ambiguities in certain terms regarding what conduct Verizon can, and cannot, engage in. As written, the ambiguous terms could be interpreted to prevent Verizon Wireless from engaging in certain competitive activities, including selling wireless services as a residential (as opposed to mobile) service and allowing Verizon to sell Verizon Wireless services along with other companies' services.

VIII. VIOLATION ALLEGED

Violation of Section 1 of the Sherman Act by Each Defendant

45. The United States hereby incorporates paragraphs 1 through 44.

46. The Commercial Agreements unreasonably restrain competition in numerous local markets for broadband, video, and wireless services throughout the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

47. The Commercial Agreements deny consumers the benefits of unrestrained competition between the Verizon Defendants and the Cable Defendants. The likely effect of the agreements is to unreasonably restrict competition for broadband, video, and wireless services.

IX. REQUESTED RELIEF

Plaintiffs request that:

a. the Court adjudge and decree that the aforesaid contract, combination, or conspiracy violates Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. the Defendants be permanently enjoined and restrained from enforcing or adhering to existing contractual provisions that restrict competition between them;

c. the Defendants be permanently enjoined and restrained from enforcing or adhering to any other combination or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

d. Plaintiffs be awarded their costs of this action; and

e. the Court grant such other relief as the Plaintiffs may request and that the Court deems just and proper.

Dated:

Respectfully submitted,

For Plaintiff United States of America:

/s/ Joseph F. Wayland
Joseph F. Wayland,
Acting Assistant Attorney General.

/s/ Renata B. Hesse
Renata B. Hesse,
Deputy Assistant Attorney General.

/s/ Patricia A. Brink
Patricia A. Brink,
Director of Civil Enforcement.

/s/ Laury E. Bobbish
Laury E. Bobbish,
Chief, Telecommunications & Media Enforcement Section.

/s/ Lawrence M. Frankel
Lawrence M. Frankel
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Assistant Chief, Telecommunications & Media Enforcement Section.

/s/ Yvette F. Tarlov
Yvette F. Tarlov
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Jared A. Hughes,*
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF NEW YORK, *Plaintiffs,* v. VERIZON COMMNICATIONS INC., CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, COMCAST CORP., TIME WARNER CABLE INC., COX COMMUNICATIONS, INC., and BRIGHT HOUSE NETWORKS, LLC, *Defendants.*	Civil Action No.:

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

The United States and the State of New York brought this lawsuit against Defendants Verizon Communications Inc. (''Verizon''), Cellco Partnership d/b/a Verizon Wireless (''Verizon Wireless''), Comcast Corporation (''Comcast''), Time Warner Cable Inc. (''Time Warner Cable''), Bright House Networks LLC (''Bright House Networks''), and Cox Communications, Inc. (''Cox'') on August 16, 2012, to remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint alleges that certain agreements among Comcast, Time Warner Cable, Bright House Networks, Cox (collectively, ''Cable Defendants''), and Verizon Wireless unreasonably restrain trade and commerce.

At the same time the Complaint was filed, the United States also filed a Stipulation and Order, and a proposed Final Judgment, which is described in more detail in Section III below. The United States, the State of New York, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Introduction

Residential voice, video, and broadband services are often purchased and provisioned in bundles with one other; such product bundles are commonly referred to as ''double-plays'' or ''triple-plays.'' Telecommunications providers, such as the Defendants, have shown increasing interest in including mobile wireless services in these bundles, and creating integrated wireline-wireless bundles. These integrated wireline-wireless bundles include ''quad-plays,'' i.e., bundles of each residential telecommunications service—voice, video, and broadband—along with a subscription to mobile wireless services. Few consumers today purchase wireline-wireless bundles or quad-plays, more often opting to purchase their wireless services separately from their wireline services.

In December 2011, Verizon Wireless and the Cable Defendants entered into a series of commercial agreements (the ''Commercial Agreements'') that allow them to sell bundled offerings that include Verizon Wireless services and a Cable Defendant's residential wireline voice, video, and broadband services, including ''quad-plays.'' In addition, the Commercial Agreements allow Defendants to develop integrated wireline and wireless telecommunications technologies through a research and development joint venture, Joint Operating Entity LLC (''the JOE'').[2]

[2] At the same time that they negotiated the Commercial Agreements, the Cable Defendants agreed to sell to Verizon Wireless a significant number of wireless spectrum licenses that they purchased in 2006 but have not used. In June 2012, Verizon Wireless agreed to resell some of that spectrum to T-Mobile USA, the smallest of the nation's four nationwide wireless carriers. Plaintiffs are not here challenging those spectrum-related agreements, which facilitate the active use of an important national resource.

In certain parts of the country, Verizon, which is Verizon Wireless's parent, offers fiber-based voice, video, and broadband services under the trade name ''FiOS.'' Verizon sells its wireline FiOS services in several geographic areas where one of the Cable Defendants also sells wireline voice, video, and broadband services, including parts of New York City, Philadelphia, and Washington, D.C. In those areas of geographic overlap, the Commercial Agreements would result in Verizon Wireless retail outlets selling two competing quad-play offerings: one including Verizon Wireless services and a Cable Defendant's services and the other including Verizon Wireless services and Verizon FiOS services. In addition to setting up this unusual structure where one part of the Verizon corporate family (Verizon Wireless) must sell products in competition with another (Verizon Telecom), the Commercial Agreements contain a variety of mechanisms that are likely to diminish Verizon's incentives and ability to compete vigorously against the Cable Defendants with its FiOS offerings and create an opportunity for harmful coordinated interaction among the Defendants regarding, among other things, the pricing of competing offerings.

The Commercial Agreements also harm the Defendants' long-term incentives to compete insofar as they create a product development partnership of potentially unlimited duration. Innovation and technological change mark the telecommunications industry, but the Commercial Agreements fail to reasonably account for such change and instead freeze in place relationships that, in certain aspects, may be harmful in the long term. For an unlimited term, the Cable Defendants collectively are restricted to one wireless partner, Verizon Wireless, and the participants in the joint technology venture are restricted to that forum—and limited to working with the partners in that venture—for integrated wireline and wireless product development. Moreover, Verizon Wireless's

ability to sell Verizon's FiOS product is restricted to the currently planned FiOS footprint, even if in future years Verizon contemplates further FiOS expansion. Exclusive sales partnerships and research and development collaborations between rivals that have no end date can blunt the long-term incentives of the Defendants to compete against each other, and others, as the industry develops.

B. The Defendants

Verizon is a Delaware corporation headquartered in New York. Verizon's consumer wireline segment, Verizon Telecom, is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Verizon Wireless is a Delaware general partnership headquartered in New Jersey, and is the nation's largest provider of wireless services. Verizon Wireless is a joint venture owned by Verizon (55%) and Vodafone Group Plc (45%), but is operated and managed by Verizon.

Comcast is a Pennsylvania corporation headquartered in Pennsylvania. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Time Warner Cable is a Delaware corporation headquartered in New York. It is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Cox is a Delaware corporation headquartered in Georgia. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

Bright House Networks is a Delaware limited liability company headquartered in New York. It is a large multi-state provider of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

C. Industry Background

Residential voice, video, and broadband services are commonly purchased together in bundles with one another. For example, Verizon offers a triple-play bundle of voice, video, and broadband FiOS services, and over 90% of FiOS customers subscribe to some form of bundle. Similarly, over 60% of Comcast customers subscribe to some form of bundle. Telecommunications providers perceive several advantages to offering services in bundles: (1) Provisioning more than one service at a time often generates cost efficiencies for the provider; (2) purchasers of bundles tend to spend more; and (3) purchasers of bundles are less likely to switch to another provider. Consumers frequently choose bundled plans, which allow them to have a single relationship for customer service, installation, and billing. Bundles are typically offered by providers that themselves provision each component service. However, some providers that cannot supply each component service partner with complementary providers to bundle their services in the marketplace.

Today, most consumers do not purchase wireless services in bundles including residential voice, video, and broadband services. For instance, Verizon sells some quad-play offerings in its FiOS territory, but its sales of quad-play bundles pale in comparison to the number of triple-play bundles it sells.

Technological developments, such as the advent of the smartphone and the increasing availability and demand for streaming video content, have the potential to increase demand for integrated wireline and wireless services. Verizon recognizes this potential and perceives an opportunity for growth in the development of products and features that integrate wireline and wireless services. But Verizon cannot fully exploit the perceived growth potential presented by wireline-wireless bundles on its own. Although Verizon Wireless offers service almost nationwide, Verizon offers FiOS in only a limited portion of the country. The Cable Defendants are particularly attractive potential partners because they each have a large customer base, and together they cover a broad geographic footprint. The Cable Defendants also owned valuable unused wireless spectrum that Verizon Wireless wished to acquire. Ultimately, Verizon Wireless and the Cable Defendants agreed to enter into the Commercial Agreements as well as agreements for the sale of the Cable Defendants' wireless spectrum to Verizon Wireless.

D. The Commercial Agreements

The Commercial Agreements enable Defendants to offer bundles combining wireline and wireless services, including in many local markets where they are unable to do so on their own because they do not themselves sell all the constituent services.

Specifically, in December 2011, Verizon Wireless and the Cable Defendants entered into a series of Commercial Agreements, which in combination (1) allow Verizon Wireless and each Cable Defendant, respectively, to sell each other's services; (2) create a structure for them to develop new products and services that integrate wireline and wireless services; and (3) create a future option for each of the Cable Defendants to operate a virtual wireless network using Verizon Wireless's network.

a. On December 2, 2011, (1) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; (2) Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks entered into a ''Joint Operating Entity'' agreement to collectively develop and market integrated wireline and wireless products; and (3) Verizon Wireless and, respectively, Comcast, Time Warner Cable, and Bright House Networks entered into ''Reseller'' agreements to provide Comcast, Time Warner Cable, and Bright House Networks the option to operate a virtual wireless network using Verizon Wireless assets; and

b. On December 16, 2011, defendants Verizon Wireless and Cox entered into (1) reciprocal ''Agent'' (sales agency) agreements to sell each other's products on a commission basis; and (2) a ''Reseller Agreement'' to provide Cox with the option to operate a virtual wireless network using Verizon Wireless assets.

The Commercial Agreements contain a number of provisions that are likely to harm competition in the markets for broadband, video, and wireless services. First, the Commercial Agreements require Verizon Wireless to sell the Cable Defendants' products even where Verizon has its own directly competing FiOS products. Under these provisions, Verizon Wireless must sell the Cable Defendants' video and broadband services through its sales channels even though Verizon itself currently uses a significant number of Verizon Wireless stores to sell FiOS. In addition, Verizon Wireless receives a commission for each sale of one of the Cable Defendants' products, even in regions where Verizon offers competing FiOS services.

Second, the Commercial Agreements also contain an explicit restraint on Verizon FiOS sales, providing that Verizon Wireless may not market or sell FiOS services unless it also offers the Cable Defendants' services on an ''equivalent basis.'' The ''equivalent basis'' provision limits Verizon's ability to offer, promote, market, and sell FiOS services in competition with the Cable Defendants' services through any Verizon Wireless distribution channel.

Third, the Commercial Agreements contain a long-term exclusivity provision that prohibits the Cable Defendants from partnering with any other wireless company.

Fourth, although the Commercial Agreements allow the Cable Defendants eventually to resell wireless services using Verizon Wireless's network under their own brands, the Cable Defendants must wait four years before they can do so.

Finally, the Commercial Agreements create the JOE, a joint venture to develop and market integrated wireline and wireless technologies. The JOE is to serve as its members' exclusive vehicle for research and development of certain wireline and wireless products: While they remain in JOE, Defendants Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks cannot independently conduct any research and development on subjects within the JOE's exclusive field, even on projects that the JOE declines to pursue. The technology developed within the JOE is exclusively available for use by Verizon, the Cable Defendants that are members of the JOE, and potentially other cable companies that agree to sell Verizon Wireless services as agents.

The Commercial Agreements are potentially unlimited in duration. The Agent agreements have an initial five-year term, which renews automatically for another five-year term, and is subject to automatic renewals every five years thereafter. The JOE agreement has no fixed expiration.

E. Relevant Markets

1. Video Services

Video providers acquire the rights to transmit video content (e.g., broadcast and

cable programming networks, television series, individual programs, or movies), aggregate that content, and distribute it to their subscribers or users. The distribution of professional video programming services to residential customers (''video services'') is a relevant product market.

Consumers purchasing video services select from among those firms that can offer such services directly to their home. Although direct broadcast satellite and online video services can serve customers across the United States, wireline video providers such as the Cable Defendants and Verizon are only able to offer services where they have, with the requisite approvals from local authorities, built out their networks to homes in a particular area. Thus, the relevant geographic markets for video services include the local markets throughout the United States where Verizon offers, or is likely soon to offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of video services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

2. Residential Broadband Internet Services

Residential broadband Internet services providers connect residential customers' electronic devices to the Internet at high speeds and in high data volumes, typically for a monthly fee. These services allow customers to access content containing large quantities of data, such as high-quality streaming video, gaming, applications, and various forms of interactive entertainment. The provision of broadband Internet services to residential customers (''broadband service'') is a relevant product market.

Consumers purchasing broadband services select from among those firms that can offer such services directly to them at their homes. The relevant geographic markets for broadband services include the local markets throughout the United States where Verizon offers, or is likely to soon offer, FiOS within the franchise territory of a Cable Defendant. A small but significant price increase by a hypothetical monopolist of broadband services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

3. Mobile Wireless Telecommunications Services

Mobile wireless telecommunications services allow customers to engage in telephone conversations and to obtain data services using radio transmissions without being confined to a small area during a call or data session, and without requiring an unobstructed line of sight to a radio tower. Mobile wireless telecommunications services include both voice and data services (e.g., texting and Internet access) provided over a radio network and allow customers to maintain their telephone calls or data sessions wirelessly when travelling. The provision of mobile wireless services (''wireless services'') is a relevant product market.

Consumers typically purchase wireless services from providers that offer and market services where they live, work, and travel on a regular basis; hence geographic markets are local. However, the largest and most successful wireless providers have national footprints and offer pricing, plans, and devices that are available nationwide. Therefore, nationwide competition among wireless services providers affects competition across local markets. The relevant geographic markets for wireless services include the local markets throughout the United States where Verizon offers wireless services, and where the Cable Defendants offer wireline services. A small but significant price increase by a hypothetical monopolist of wireless services in any of these geographic areas would not be made unprofitable by consumers switching to other services.

F. The Cable Defendants' Market Power

The Cable Defendants are dominant in many local markets for both video and broadband services, with a reported national market share for incumbent cable companies of greater than 50% for both broadband and video services, although their shares may be higher or lower in any particular local market for any particular service. Each Cable Defendant has market power in numerous local geographic markets for both broadband and video services.

The concentrated nature of both the broadband and video services product markets, and the Cable Defendants' market power, are largely due to historical factors. In most geographic areas, the local cable network was originally constructed pursuant to a local franchise agreement that gave the cable carrier exclusive rights to provide service in that area in exchange for a commitment to build out broad cable coverage. The copper-wire telephone network was the only other telecommunications infrastructure built out to most households, and it too was subject to an exclusive license. For decades, the telephone companies were not permitted to offer cable services, and vice versa.

The Telecommunications Act of 1996 was intended to foster enhanced competition between the telephone companies and the cable companies. Among other changes to national telecommunications policy, the Act removed regulatory constraints on competition between the telephone and cable companies in each other's markets.

In 2005, Verizon began offering FiOS services over its newly constructed fiber-optic network. FiOS has been, and remains, a significant competitive threat to cable in the regions where it has been built. Verizon's FiOS offerings have been aggressive in terms of both price and quality, and the cable companies have reacted to FiOS by upgrading their broadband networks and improving the quality of their video products. As Verizon has expanded FiOS to cover millions of households, it has consistently won significant market share in both broadband and video in the local markets where it offers those services.

Verizon continues to build FiOS infrastructure pursuant to a number of local franchise agreements. Well before entering into the Commercial Agreements, Verizon publicly announced its decision not to invest in further FiOS expansion beyond its obligated builds. Verizon's business plans with respect to future FiOS expansion have not changed significantly since it entered into the Commercial Agreements. Nonetheless, Verizon still considers, from time to time, whether to invest further in the expansion of its FiOS infrastructure. Its decision whether to do so will be affected by, among other things, whether technological or business conditions become more conducive to additional buildout in future years.

G. Anticompetitive Effects of the Agreements

The Commercial Agreements, and in particular the following provisions thereof, harm competition in the video, broadband, and wireless markets because they impair the ability and incentives for Verizon and the Cable Defendants to compete aggressively against each other:

a. Verizon is restrained from marketing or selling FiOS in Verizon Wireless stores unless it also sells a Cable Defendant's services on an ''equivalent basis.'' This restriction reduces Verizon's ability and incentives to compete aggressively against the Cable Defendants' products and facilitates anticompetitive coordination among the Defendants.

b. Verizon Wireless is required to sell each Cable Defendant's services in direct competition with FiOS, and Verizon Wireless receives a commission for each such sale. This requirement reduces Verizon's incentives and ability to compete aggressively against the Cable Defendants with FiOS and facilitates anticompetitive coordination among Defendants.

The Commercial Agreements diminish the incentives and ability of Verizon and the Cable Defendants to compete in those areas where the Cable Defendants' territories overlap with those in which Verizon has built, or is likely to build, FiOS infrastructure. They transform the Defendants' relationship from one in which the firms are direct, horizontal competitors to one in which they are also partners in the sale of the Cable Defendants' services. Rather than having an unqualified, uninhibited incentive and ability to promote its FiOS video and broadband products as aggressively as possible, Verizon will be contractually required and have a financial incentive to market and sell the Cable Defendants' products through Verizon Wireless channels in the same local geographic markets where Verizon also sells FiOS. The Commercial Agreements deprive FiOS of the ability to exploit fully a valuable marketing channel and alter Verizon's incentives with respect to pricing, marketing, and innovation. They unreasonably diminish competition between Verizon and the Cable Defendants—competition that is critical to maintaining low prices, high quality, and continued innovation.

The Commercial Agreements also unreasonably diminish future incentives to compete for product and feature development pertaining to the integration of broadband, video, and wireless services. Although the JOE technology joint venture may produce useful innovations that benefit consumers, the JOE has a potentially unlimited duration, and it contains

restrictions on its members' abilities to innovate outside of the JOE or to collaborate using JOE technology with any partner that is not also a member of the JOE. These aspects of the JOE unreasonably reduce the incentives and ability of Defendants to compete on product and feature development, and create an enhanced potential for anticompetitive coordination.

The Commercial Agreements also unreasonably restrain the ability of the Cable Defendants to offer wireless services on a resale basis. Although the agreements permit the Cable Defendants eventually to act as wireless competitors using Verizon Wireless's network at least in part, the Cable Defendants are explicitly prohibited from doing so for the first four years of the agreements, and meanwhile they may only offer Verizon Wireless services as sales agents. Whereas most wireless resellers do not serve as a significant competitive constraint on facilities-based providers, the Cable Defendants have extensive network facilities and other commercial advantages that could enhance their relevance as competitors, and they have explored how to leverage those assets to their advantage. A four-year delay in the ability of the Cable Defendants to develop their own wireless offerings, relying in part on Verizon Wireless's network, diminishes their incentive to invest in potential wireless offerings and inhibits their ability to bring those offerings to market in a timely manner.

The provisions of the Commercial Agreements that make Verizon Wireless the exclusive wireless partner of the Cable Defendants also unreasonably restrain competition in the market for wireless services. Although the exclusivity provisions of the agreements may be reasonably necessary to bind the parties into a cooperative relationship for the next several years, the unlimited duration of the wireless exclusivity is unreasonable and unnecessarily restrains competition in the long term, if the ability to sell wireless services in combination with video or broadband services becomes an important component of wireless competition. Should the ability to offer integrated bundles develop into an important characteristic of competition for wireless services, these agreements would unreasonably prevent wireless carriers from offering those bundles with the most significant providers of video and broadband services.

The Commercial Agreements also significantly and adversely affect Verizon's long-term competitive incentives to reconsider, in future years, its pre-existing decision not to build out FiOS beyond its current commitments. Although Verizon's current plans do not contemplate additional FiOS buildout beyond the currently obligated areas—and therefore significant additional buildout is unlikely for at least the next several years—developments in the technology and economics of FiOS deployment and competition in the markets for video and broadband services more broadly, may cause Verizon to re-evaluate the possibility of additional buildout. The requirement and financial incentive for Verizon Wireless to sell the Cable Defendants' services, combined with the unlimited duration of the Commercial Agreements, could, in the long-term, create a disincentive to additional buildout in some areas within Verizon's wireline territory but outside the currently planned FiOS footprint.

The Commercial Agreements also unreasonably restrain competition due to ambiguities in certain terms regarding what conduct Verizon can, and cannot, engage in. As written, the ambiguous terms could be interpreted to prevent Verizon Wireless from engaging in certain competitive activities, including selling wireless services as a residential (as opposed to mobile) service and allowing Verizon to sell Verizon Wireless services along with other companies' services.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to remedy the violation alleged in the Complaint while, at the same time, minimizing interference with possible procompetitive benefits of the agreements and maintaining flexibility to account for changing market conditions and technology. In particular, the proposed Final Judgment contains relief designed to eliminate the anticompetitive provisions, or aspects, of the Commercial Agreements while at the same time allowing the aspects that might be procompetitive to proceed. In a number of instances, the proposed Final Judgment contains a prohibition of certain conduct that goes into effect several years into the future, but allows the Defendants to petition the United States to continue that conduct, thereby allowing the restrictions of the decree to adjust depending on future developments.

The proposed Final Judgment sets forth (1) certain prohibited conduct, (2) certain amendments required to be made to the Commercial Agreements, (3) anti-collusion provisions and compliance training requirements, and (4) reporting requirements to enable the United States to ensure the Defendants' compliance with the proposed Final Judgment.

A. Prohibited Conduct

1. No Sales of Cable Services in the FiOS Footprint

Sections V.A and V.B of the proposed Final Judgment seek to maintain Verizon's incentives to aggressively market FiOS against the Cable Defendants in the areas in which both services are available and to ensure vigorous competition in the future. These sections prohibit Verizon Wireless from selling the Cable Defendants' services (''Cable Services'') in areas in which Verizon offers, or is likely to offer in the near term, FiOS service. This is necessary to ensure that Verizon receives no financial return from sales diverted from FiOS to the Cable Defendants.[3] Specifically, Verizon Wireless is barred by Section V.A from (a) selling Cable Services to residents who live within the FiOS Footprint; and (b) selling Cable Services in Verizon Wireless retail stores located within the FiOS Footprint.

The ''FiOS Footprint'' is defined to include not only areas that are currently served by FiOS, but those areas for which Verizon has a legal obligation to build FiOS facilities or is authorized to do so.[4] Verizon has publicly stated that it does not presently intend to build FiOS beyond the areas it has committed to local authorities to build. However, the proposed Final Judgment accounts for the possibility that developments in the technology and economics of FiOS deployment may in the future make additional buildouts profitable. It does this in two ways. First, any new areas where Verizon acquires additional authorizations to build FiOS also are included in the definition of ''FiOS Footprint.'' This ensures that if Verizon does build out FiOS in additional areas, its incentive to aggressively market and sell FiOS will not be blunted by the commissions it receives from the Cable Defendants for selling their competing products. Second, Section V.B extends the prohibition on Verizon Wireless's selling of Cable Services more broadly on the five year anniversary of the agreements. After December 2, 2016,[5] Verizon Wireless is prohibited from selling Cable Services both to residents who live within the ''DSL Footprint'' and in DSL Footprint Stores. The DSL Footprint consists of territory, other than the FiOS Footprint, where Verizon Telecom provides DSL service to more than a de minimis number of customers. Section V.B thus ensures that, as its planned buildout of FiOS is completed, Verizon's decision whether to extend the FiOS network will not be affected by its ability to sell, on a commission basis, Cable Services in lieu of developing its own products.

Verizon Wireless may, at least 120 days before December 2, 2016, petition the United States to allow it to continue to sell Cable Services in the DSL Footprint or some portion thereof. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions in the relevant area to determine whether such sales will adversely impact competition and decide, in its sole discretion, whether to approve such a request.[6] This provision gives

[3] The proposed Final Judgment does not bar the Cable Defendants from selling Verizon Wireless services anywhere. The Cable Defendants do not have their own wireless products and do not have any reduced incentive to market their various offerings as a result of these agreements. Therefore, there is no significant competitive concern with the Cable Defendants selling Verizon Wireless and the proposed Final Judgment does not interfere with these sales.

[4] Verizon has legally binding agreements with several local authorities to continue building its FiOS network. Should Verizon build out its network only so far as those agreements require, it will reach over 19 million homes by the end of 2018. The ''FiOS Footprint'' as defined in the proposed Final Judgment thus includes all areas covered by those commitments.

[5] This date is five years after the signing of several of the Commercial Agreements, and is the initial term set by the agreements, absent a renewal.

[6] The proposed Final Judgment requires the United States to grant or deny petitions under this section, and several others, within sixty (60) days. Should the United States require more time to make a decision due to lack of sufficient information, it

Continued

the United States important flexibility in administering the proposed Final Judgment to adapt to changes in technology or business models over the next several years. For instance, to the extent that Verizon is reasonably able to expand its ability to compete against the Cable Defendants using its own video and broadband products (with either FiOS or some other technology) within the DSL Footprint or any subset thereof, and would have the incentive to do so in the absence of the Commercial Agreements, the United States may deny any request from Verizon Wireless under this provision. In making this determination, the United States may rely in part on the periodic reports that Verizon is required to submit under Section VI.D, as discussed in more detail below.

The proposed Final Judgment permits Verizon Wireless to engage in certain limited activities that do not adversely affect competition. Section V.C provides that Verizon Wireless may advertise Cable Services in national or regional advertising that may reach residents of the FiOS Footprint or DSL Footprint, as long as it does not specifically target such advertising in local areas where Verizon Wireless is prohibited from selling Cable Services pursuant to Sections V.A and V.B. This provision preserves the ability of Verizon Wireless to engage in advertising to an efficient-sized area while, at the same time, preventing any advertising directed specifically at areas where Verizon Wireless is not permitted to sell Cable Services. To the extent that Verizon Wireless engages in such advertising and, as a result, a customer seeks to acquire Cable Services from a Verizon Wireless store in the FiOS (or DSL) Footprint, Verizon Wireless is permitted to provide factual information about Cable Services, as discussed further below, but may not sell Cable Services in such stores. Rather, Verizon Wireless will promote Verizon's services where available.

Verizon Wireless stores also may provide customers who purchase wireless services through one of the Cable Defendants' sales channels with the actual device that the customer purchased. This provision enables a customer who has already made the decision to purchase Verizon Wireless service from a Cable Defendant, and indeed has done so, to have a convenient way of obtaining the purchased device. Because the Cable Defendants do not operate retail stores on a widespread basis, they may rely on Verizon Wireless stores to actually deliver wireless devices to customers who purchase wireline-wireless bundles from them. The consumer benefits from being able to obtain a wireless device from a store; competition is not harmed because the Verizon Wireless store merely acts as a distribution outlet for a device that has already been acquired.

Finally, Verizon Wireless may provide information to potential customers regarding Cable Services in the FiOS (or DSL) Footprint, as long as Verizon Wireless receives no compensation for making such information available. This provision is designed to enable Verizon Wireless to provide limited factual information to a customer who wishes to purchase Cable Services but is confused about a particular Verizon Wireless store's ability to sell those services.

2. Limited Duration, and Other Restrictions, on the JOE

While the JOE technology joint venture has the potential to produce useful innovations that benefit not only the JOE members, but consumers as well, the unlimited term of the JOE agreement threatens to lessen competition among its members. As the Department of Justice and Federal Trade Commission have stated before, in general, the longer that would-be competitors collaborate with one another on a joint venture, the less likely they are to compete against one another.[7] Accordingly, Section V.F requires the Defendants who are members of the JOE to withdraw from the JOE by December 2, 2016. This provision is designed to allow the JOE time to develop wireline-wireless technologies that could benefit consumers, while ensuring that any procompetitive benefits are not outweighed by possible exclusionary or collusive conduct. Any Defendant that is a member of the JOE may, at least 180 days before December 2, 2016 and prior to 150 days before December 2, 2016, petition the United States for permission to continue its participation in the JOE. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine whether the Defendant's continued participation in the JOE will adversely impact competition. In making this determination, the United States may rely in part on the periodic reports that Verizon Wireless is required to submit under Section VI.D, which will contain information regarding the products and technologies under development by the JOE.

The proposed Final Judgment also ensures that the JOE Agreement does not unreasonably restrict its members from independently developing new services or working with non-JOE members after a member exits the JOE or the JOE is dissolved. Under the JOE Agreement, each JOE member is prohibited from independently developing technologies within the ''exclusive field,'' which consists, *inter alia,* of the integration of wireline and wireless services. As the JOE's primary owners, Verizon Wireless (50% ownership) and Comcast (31.8%) set its product roadmap and development priorities, with input from Time Warner Cable and Bright House Networks. If, for example, Time Warner Cable were to prioritize a particular product or feature as high but Verizon Wireless prioritizes it as low, then the JOE could decide not to develop the feature and leave Time Warner Cable with no path to develop the feature on its own. Section IV.D thus requires the Defendants to amend the JOE Agreement to allow Time Warner Cable and Bright House Networks to independently develop any technology that Time Warner Cable or Bright House Networks has presented to the JOE for potential development but that the joint venture has declined or ceased to pursue.

Section IV.E requires that, upon exiting the JOE, the exiting Defendant will be granted an immediate, irrevocable, perpetual, royalty-free fully paid-up non-exclusive license with immediate rights to sublicense, exploit, and commercialize any intellectual property then owned by the JOE. Section IV.E thus permits the Cable Defendants to license JOE-developed technology to other wireless carriers if they choose to do so upon leaving the JOE.

3. Ban on Wireless Exclusivity

Exclusivity may have procompetitive benefits, such as preserving incentives to invest and preventing free-riding. Under the Commercial Agreements, Verizon Wireless is the exclusive wireless partner of the Cable Defendants. This could, potentially, have procompetitive benefits, particularly in the short term while integrated wireline-wireless offerings are in their infancy and most customers do not buy wireline and wireless services together in a bundle. However, because the Verizon Wireless Agent Agreements can be renewed indefinitely, the exclusivity here is of an unreasonably long—potentially unlimited—duration. Depending on how the marketplace develops, particularly with respect to the success of wireline-wireless bundles (e.g., ''quad plays''), the exclusivity could unnecessarily and unreasonably restrict wireless competition in the future by foreclosing other wireless carriers from access to the most valuable wireline partners long-term. This could reduce the number of competing bundles, as well as the ability of various wireless carriers to provide constituent parts of those bundles. Accordingly, Section V.D prohibits Verizon Wireless from enforcing any exclusivity provisions of the Commercial Agreements that would bar any of the Cable Defendants from selling wireless services on behalf of a carrier other than Verizon Wireless after December 2, 2016.

Verizon Wireless may, at least 120 days before December 2, 2016, petition the United States for permission to continue its exclusive sales agreements with the Cable Defendants. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine, in its sole discretion, whether the Cable Defendants' continued exclusivity to Verizon Wireless will adversely impact competition. In making this determination, the United States may rely in part on the periodic reports that Verizon is required to submit under Section VI.D, as discussed in more detail below. Because competitive conditions may change more than four years hence, this provision allows the United States flexibility to determine at that time whether continued exclusivity would be beneficial or harmful to competition going forward.

may deny the petition without prejudice until such information is available.

[7] See U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for Collaborations Among Competitors* § 3.34(f) (Apr. 2000), *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf* (''The Agencies consider the duration of the collaboration in assessing whether participants retain the ability and incentive to compete against each other and their collaboration. In general, the shorter the duration, the more likely participants are to compete against each other and their collaboration.'').

4. No New Agreements

To prevent the Defendants from frustrating the purpose of the proposed Final Judgment, Sections V.G and V.H prohibit the Defendants from modifying the Commercial Agreements without prior written approval of the United States in its sole discretion. Section V.G also ensures that the amendments made to satisfy the requirements of the proposed Final Judgment are implemented in a way that satisfies the United States that they achieve the decree's purposes. Sections V.E, V.G, V.H, and V.I prohibit the Defendants from entering new agreements that would serve a similar purpose, or have similar effects, as the Commercial Agreements without prior written approval of the United States in its sole discretion.

B. Required Amendments to the Agreements

As originally written, the Commercial Agreements allowed Verizon Wireless to market FiOS, but only on an ''equivalent basis'' with its marketing of Cable Services, and they did not allow Verizon Wireless to market other Verizon wireline products at all. As noted above, these provisions would impede Verizon's ability to market its wireline products in competition with the Cable Defendants by unreasonably depriving it of the unfettered use of an important marketing channel; they also could lead to enhanced coordination. Accordingly, Section IV.B requires the Defendants to amend the Commercial Agreements such that there is unambiguously no restriction or condition on Verizon Wireless's ability to sell Verizon's wireline products, including DSL. Although the proposed Final Judgment already also prohibits Verizon Wireless from selling Cable Services in areas where FiOS operates, or is likely to operate in the future, Section IV.B ensures that the Defendants actually modify the problematic agreements and do not condition Verizon Wireless's ability to sell Verizon's wireline services on Verizon Wireless's efforts or success in selling Cable Services in the areas where it remains able to make such sales.

The Defendants disagree among themselves about the meaning of certain terms in the Commercial Agreements. Because these terms could be interpreted in a way that results in diminished competition, they are potentially unreasonable. Sections IV.A and IV.C require the Defendants to amend the Commercial Agreements to clarify these terms and to do so in a way that enhances rather than restricts competition. As written, the Commercial Agreements could be interpreted to prevent Verizon Wireless from selling wireless services as a residential (as opposed to mobile) service in competition with the Cable Defendants. The Commercial Agreements also arguably prohibit Verizon Telecom from selling Verizon Wireless services along with other video services. The proposed Final Judgment requires the Defendants to resolve these ambiguities in such a way as to make clear that Verizon Wireless is free to engage in these competitive activities. If these provisions were left unchanged, the Cable Defendants could threaten to enforce the offending provisions in order to prevent Verizon Wireless from taking competitive actions against them.

Under the Commercial Agreements, the Cable Defendants may eventually elect to become resellers of Verizon Wireless's service. As resellers using, at least in part, Verizon Wireless's network,[8] the Cable Defendants could provide additional competition in wireless as well as, potentially, wireline-wireless bundles, but they are unreasonably prohibited from doing so—even if they would otherwise find it commercially feasible and profitable—until March 2016. Meanwhile they may only offer Verizon Wireless services as sales agents.

Section IV.F requires the Defendants to modify the Commercial Agreements so that a Cable Defendant electing to operate as a reseller of Verizon Wireless services shall have the right to make such services commercially available six months after making such election. However, the amended Commercial Agreements may condition a particular Cable Defendant's election to operate as a reseller of Verizon Wireless Services on another Cable Defendant's first making such election. For ease of administration, the original Commercial Agreements gave certain Cable Defendants the right to elect to become resellers of Verizon Wireless Services only after a lead Cable Defendant made such an election, and tied the choice for one Cable Defendant to the choice made by another Cable Defendant. Section IV.F preserves that structure while ensuring that, once a Cable Defendant is authorized to elect to become a reseller and in fact makes such an election, it may begin reselling Verizon Wireless Services soon thereafter.

C. Anti-Collusion Provisions and Compliance Program

The proposed Final Judgment prohibits any form of anticompetitive collusion and contains provisions designed to ensure the Defendants' compliance. This is particularly important because the implementation of the Commercial Agreements, and realization of legitimate business objectives, will require some communication between Verizon Wireless and the Cable Defendants. In order to ensure that such communications are limited to legitimate business purposes and do not extend to anticompetitive collusion, the proposed Final Judgment contains certain safeguards discussed below.

Section V.J prohibits the Defendants from facilitating or reaching any agreement between Verizon's wireline segment and any Cable Defendant relating to the price, terms, availability, expansion, or non-expansion of wireline telecommunications services. This provision makes clear that although Verizon Wireless and the Cable Defendants will work together to deliver bundled wireless and wireline services to consumers, such joint efforts must not include any agreements between Verizon's wireline segment that would lessen competition with the Cable Defendants.

Section V.K ensures that no competitively sensitive information passes between the Cable Defendants and Verizon's consumer wireline business, in order to prevent collusion or other lessening of the intensity of the competitive rivalry between FiOS and the Cable Defendants. To the extent that the Cable Defendants share competitively sensitive information with Verizon Wireless, Verizon Wireless must take precautions to prevent such information from reaching Verizon Telecom. To that end, no employee of Verizon or Verizon Wireless may have access to both competitively sensitive Verizon Telecom information and competitively sensitive information from a Cable Defendant, except in certain limited, specifically enumerated circumstances. First, Section V.K allows the exchange of certain aggregated information pursuant to firewall provisions in the existing Commercial Agreements. Second, employees or officers of Verizon Wireless who are responsible for implementing or evaluating joint offers between (1) Verizon Wireless and the Cable Defendants, and (2) Verizon Wireless and Verizon Telecom, may have access to nonpublic information regarding both Verizon Telecom and the Cable Defendants, but in no event may these officers and employees share the nonpublic information of any Cable Defendant with Verizon Telecom, or vice versa. These officers and employees will be required to participate in the antitrust compliance and education program, described further below, which will help ensure that they understand their obligations under the proposed Final Judgment.

Section VI.A requires each Defendant to describe to the United States and New York the actions it has taken to comply with the proposed Final Judgment. Section VI.B requires each Verizon Defendant to submit a proposed compliance plan to the United States and New York, which the United States will either approve or reject. Should the United States and a Verizon Defendant be unable to agree on a compliance plan, the Court may be called upon to determine whether the Verizon Defendant's proposed compliance plan is reasonable. These provisions are important to ensure that Defendants take all the steps necessary to adhere to the proposed Final Judgment's substantive requirements, and that the United States is fully aware of these steps.

Section VI.C requires each Defendant to furnish to the United States and New York copies of any amendment to the Agreements along with a narrative explanation of the purposes and effect of such amendment. This provision allows the Plaintiffs to monitor future amendments to ensure they do not violate the decree.

Section VIII sets forth various mandatory procedures to ensure Defendants' compliance with the proposed Final Judgment, including a requirement that the Defendants (a) provide each of its officers, directors, senior executives, and employees whose responsibilities involve management of the JOE or the implementation of any of the Commercial Agreements with copies of the proposed Final Judgment and this Competitive Impact Statement; and (b)

[8] The Cable Defendants could, for example, use their own Wi-Fi assets to supplement their use of Verizon Wireless's network in offering retail wireless services.

annually furnish to each such person a description and summary of the meaning and requirements of the proposed Final Judgment and the antitrust laws generally.

D. Reporting Requirements

Section VI.D of the proposed Final Judgment requires Verizon and Verizon Wireless to make periodic reports to the U.S. Department of Justice and the Federal Communications Commission to allow those agencies to better monitor the state of competition during the pendency of the decree. Verizon Wireless must submit reports regarding its sales of Cable Services, its sales of FiOS services, and the activities of the JOE. Verizon must submit reports regarding its ongoing FiOS buildout and its sales of DSL service. These reports will enable the United States to monitor the development of competition over the term of the proposed Final Judgment, in order to allow it to determine whether to grant or deny any requests made by a Defendant for relief from any provision in the proposed Final Judgment. The reports will also be useful in alerting the United States to potential violations of the decree that would merit investigation.

Section VII includes standard provisions allowing the United States to obtain information from the Defendants in order to investigate potential violations of the proposed Final Judgment, as well as to determine whether the proposed Final Judgment should be modified or vacated, or to exercise any discretion granted by the proposed Final Judgment. To facilitate the exercise of these compliance inspection and visitorial powers, Sections VI.E and VI.F require the Defendants to collect and maintain all communications relating to the Agreements between a Verizon Defendant on the one hand and a Cable Defendant on the other hand.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States, the State of New York, and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Lawrence M. Frankel, Assistant Chief, Telecommunications & Media Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against the agreements in their entirety. The United States is satisfied, however, that the revisions to the agreements described in the proposed Final Judgment, along with the prohibition of sales by Verizon Wireless of the Cable Defendants' services in areas where Verizon offers FiOS in competition with the Cable Defendants, will preserve competition for the provision of video and residential broadband service in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); see generally United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[9]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed

[9] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[10] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and the APPA does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459; see also InBev, 2009 U.S. Dist. LEXIS 84787, at *20 (''The 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Microsoft, 56 F.3d at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[11]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 16, 2012

Respectfully submitted,

/s/Jared A. Hughes

Jared A. Hughes,
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF NEW YORK, Plaintiffs, v. VERIZON COMMNICATIONS INC., CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, COMCAST CORP., TIME WARNER CABLE INC., COX COMMUNICATIONS, INC., and BRIGHT HOUSE NETWORKS, LLC, Defendants.	Civil Action No.:

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the State of New York, filed their Complaint on August 16, 2012, Plaintiffs and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Plaintiffs require Defendants to agree to undertake certain actions and refrain from certain conduct for the purposes of remedying the unlawful restraints of trade alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that actions and conduct restrictions can and will be undertaken and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against

[10] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

[11] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. Definitions

As used in this Final Judgment:

A. ''BHN'' means defendant Bright House Networks, LLC, a Delaware limited liability company with its headquarters in East Syracuse, New York, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

B. ''Broadband Internet services'' means the provision to end-users of high-speed (capable of download speeds exceeding 760 kbps) connectivity to the Internet.

C. ''Cable Defendants'' means Comcast, TWC, BHN, and Cox, acting individually or collectively, as appropriate.

D. ''Cable Service'' means any wireline Broadband Internet service, telephony service, or Video Programming Distribution service offered by a Cable Defendant, or any bundle thereof, provided over facilities owned or operated by such Cable Defendant.

E. ''Comcast'' means defendant Comcast Corporation, a Pennsylvania corporation with its headquarters in Philadelphia, Pennsylvania, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

F. ''Commercial Agreements'' means: (1) the Reseller Agreement for Comcast Cable Communications, LLC, by and between VZW and Comcast Cable Communications, LLC, (2) the Comcast Agent Agreement, dated December 2, 2011 by and between Comcast Cable Communications, LLC and VZW, (3) the VZW Agent Agreement, dated December 2, 2011, by and between VZW and Comcast Cable Communications, LLC, as amended by Amendment Number 1, effective as of December 2, 2011, (4) the Reseller Agreement for Time Warner Cable Inc., by and between VZW and TWC, (5) the TWC Agent Agreement, dated December 2, 2011 by and between TWC and VZW, (6) the VZW Agent Agreement, dated December 2, 2011, by and between VZW and TWC, as amended by Amendment Number 1, effective as of December 6, 2011 and Amendment Number 2, effective as of June 4, 2012, (7) the BHN Agent Agreement, dated December 2, 2011 by and between BHN and VZW, (8) the VZW Agent Agreement, dated December 2, 2011, by and between VZW and BHN, (9) the Reseller Agreement for Bright House Networks, LLC, by and between VZW and BHN, (10) the Cox Agent Agreement, dated December 16, 2011 by and between Cox and VZW, (11) the VZW Agent Agreement, dated December 16, 2011, by and between VZW and Cox, as amended by Amendment Number 2, effective as of May 14, 2012, (12) the Reseller Agreement for Cox, by and between Cox and VZW, and (13) all schedules, exhibits, and amendments variously thereto.

G. ''Competitively Sensitive Cable Information'' means any non-public information relating to the price, terms, availability, or marketing plans of Cable Services.

H. ''Competitively Sensitive VZT Information'' means any non-public information relating to the price, terms, availability, or marketing plans of VZT Services.

I. ''Cox'' means defendant Cox Communications, Inc., a Delaware corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

J. ''DSL Footprint'' means any territory that is, as of the date of entry of this Final Judgment, served by a wire center that provides Digital Subscriber Line (''DSL'') service to more than a de minimis number of customers over copper telephone lines owned and operated by VZT, but excluding any territory in the FiOS Footprint.

K. ''DSL Footprint Store'' is any Verizon Store that shares a 5-digit zip code with any street address in the DSL Footprint, but excluding any FiOS Footprint Stores.

L. ''Defendants'' means Verizon, Verizon Wireless, Comcast, TWC, BHN, and Cox, acting individually or collectively, as appropriate.

M. ''FiOS Footprint'' means any territory in which Verizon at the date of entry of this Final Judgment or at any time in the future: (i) has built out the capability to deliver FiOS Services, (ii) has a legally binding commitment in effect to build out the capability to deliver FiOS Services, (iii) has a non-statewide franchise agreement or similar grant in effect authorizing Verizon to build out the capability to deliver FiOS Services, or (iv) has delivered notice of an intention to build out the capability to deliver FiOS Services pursuant to a statewide franchise agreement.

N. ''FiOS Footprint Store'' is any Verizon Store that shares a 5-digit zip code with any street address in the FiOS Footprint.

O. ''FiOS Service'' means any wireline Broadband Internet service, telephony service, or Video Programming Distribution service offered by Verizon that operates over fiber to the home over facilities owned or operated by Verizon.

P. ''JOE Agreement'' means the Limited Liability Company Agreement of Joint Operating Entity, LLC, dated December 2, 2011, among JOE LLC, Comcast, VZW, Time Warner Cable LLC, and BHN, and all schedules, exhibits, and amendments thereto.

Q. ''JOE LLC'' means Joint Operating Entity, LLC, a Delaware limited liability company, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

R. ''Non-Verizon Wireless Service'' means any wireless service provided to an end-user over any network operating over wireless spectrum licensed by the Federal Communications Commission (''FCC'') pursuant to the FCC's rules and offered by an entity other than Verizon Wireless.

S. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

T. ''Sell'' (including the correlative terms ''Sale'' and ''Selling'') means offer, promote, market, or sell.

U. ''Subsidiary,'' ''Partnership,'' and ''Joint Venture'' refer to any person in which there is partial (25 percent or more) or total ownership or control between the specified person and any other person, provided that (1) BHN is not a Subsidiary, Partnership, or Joint Venture of TWC for any purpose of this Final Judgment; (2) Hulu, LLC is not a Subsidiary, Partnership, or Joint Venture of Comcast for any purpose of this Final Judgment; (3) Midcontinent Communications is not a Subsidiary, Partnership, or Joint Venture of Comcast for any purpose of this Final Judgment; (4) JVL Ventures, LLC is not a Subsidiary, Partnership, or Joint Venture of Verizon Wireless for any purpose of this Final Judgment; and (5) TCM Parent, LLC (d/b/a Travel Channel) is not a Subsidiary, Partnership, or Joint Venture of Cox for any purpose of this Final Judgment.

V. ''TWC'' means defendant Time Warner Cable Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

W. ''Verizon'' means defendant Verizon Communications Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its Subsidiaries, divisions, groups, Partnerships and Joint Ventures, and their directors, officers, managers, agents, and employees.

X. ''Verizon Defendants'' means Verizon and Verizon Wireless, acting individually or collectively, as appropriate.

Y. ''Verizon Store'' is any retail store, kiosk, or other physical location open to the public that is in any part owned or operated, directly or indirectly, by Verizon or Verizon Wireless. Stores that are authorized to sell Verizon Wireless Services but that are not in any part owned or operated by Verizon or Verizon Wireless are not Verizon Stores.

Z. ''Verizon Wireless'' or ''VZW'' mean defendant Cellco Partnership d/b/a Verizon Wireless, a joint venture between Verizon Communications Inc. and Vodafone Group, plc.

AA. ''Verizon Wireless Equipment'' means any end-user equipment designed to allow a user to access a Verizon Wireless Service.

BB. ''Verizon Wireless Service'' means any retail wireless service offered by Verizon Wireless and provided to an end-user over any network operating over wireless spectrum licensed by the Federal Communications Commission (''FCC'') pursuant to the FCC's rules.

CC. ''Video Programming Distribution'' means the distribution of professional video programming to residential customers.

DD. ''VZT'' means any subsidiary or entity within Verizon that offers consumer wireline services in the United States.

EE. ''VZT Service'' means any Broadband Internet service, telephony service, Video Programming Distribution service, or any other consumer service offered by VZT, or any bundle thereof, including FiOS Services, over facilities owned, operated, or leased by VZT.

FF. ''Wireless Exclusivity Provision'' means any contractual provision that restricts or prohibits the sale of a Non-Verizon Wireless Service by a Cable Defendant.

III. Applicability

This Final Judgment applies to Verizon, Verizon Wireless, Comcast, TWC, BHN, and Cox, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required Conduct

Within thirty (30) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later:

A. Defendants shall amend the Commercial Agreements so that there is unambiguously no restriction or condition on the sale by Verizon Wireless of any Verizon Wireless Service. Under the amended Commercial Agreements, Verizon Wireless shall be free to sell Home Fusion, Home Phone Connect, or any other Verizon Wireless Service.

B. Defendants shall amend the Commercial Agreements so that there is unambiguously no restriction or condition on the sale by Verizon Wireless of any VZT Service. Under the amended Commercial Agreements, Verizon Wireless shall not be required to sell Cable Services on an ''equivalent basis'' as VZT Services, nor shall Verizon Wireless's freedom to sell VZT Services relate in any way to Verizon Wireless's efforts or successes in selling Cable Services.

C. Defendants shall amend the Commercial Agreements so that there is unambiguously no restriction on Verizon Wireless's ability to authorize, permit, or enable VZT to sell a Verizon Wireless Service in combination with VZT Services or any Person's Broadband Internet, telephony, or Video Programming Distribution service. Notwithstanding the foregoing, the amended Commercial Agreements may prohibit Verizon Wireless from initiating or marketing such a combined Sale.

D. Verizon Wireless, Comcast, TWC, and BHN shall amend the JOE Agreement to give each of TWC and BHN the right to independently develop any technology that TWC or BHN has first presented to the Board of Managers of JOE LLC. The amended JOE Agreement may, however, prohibit TWC or BHN from developing such technology that JOE LLC has determined to pursue for so long as JOE LLC continues to actively pursue such technology.

E. Verizon Wireless, Comcast, TWC, and BHN shall amend the JOE Agreement to clarify that any member of JOE LLC that exits JOE LLC shall, upon exit from JOE LLC (including an exit required pursuant to V.F), be granted an irrevocable, perpetual, royalty-free fully paid-up non-exclusive license with immediate rights to sublicense, exploit, and commercialize any intellectual property rights owned by JOE LLC as of the applicable exit date, except that if JOE LLC dissolves, the members at the time of dissolution may receive joint ownership of the intellectual property rights owned by JOE LLC as of the date of dissolution instead of receiving such a license. Notwithstanding the foregoing, any such license may be subject to (i) any restrictions contained in any third-party licenses granted to JOE LLC, (ii) obligations of confidentiality with respect to trade secrets (including source code) of JOE LLC, and (iii) termination based on the licensee or any of its affiliates bringing certain intellectual property infringement claims against JOE LLC or any of its other direct or indirect licensees.

F. Defendants shall amend the Commercial Agreements so that a Cable Defendant electing to operate as a reseller of Verizon Wireless Services shall have the right to make such services commercially available six (6) months after such an election. Notwithstanding the foregoing, the amended Commercial Agreements may condition a particular Cable Defendant's election to operate as a reseller of Verizon Wireless Services on another Cable Defendant's first making such an election.

G. Defendants shall amend the Commercial Agreements to incorporate the prohibitions reflected in V.A, V.B, and V.D.

V. Prohibited Conduct

A. Verizon Wireless shall not sell any Cable Service: (a) for a street address that is within the FiOS Footprint or (b) in a FiOS Footprint Store. Verizon Wireless shall not permit any other Person to sell any Cable Service in a FiOS Footprint Store.

B. Verizon Wireless shall not, after December 2, 2016, sell any Cable Service: (a) for a street address that is within the DSL Footprint or (b) in a DSL Footprint Store. Verizon Wireless shall not, after December 2, 2016, permit any other Person to sell any Cable Service in a DSL Footprint Store. Verizon Wireless may, at any time prior to 120 days before December 2, 2016, petition the United States to allow sales of Cable Services in any subset or subsets of the DSL Footprint (up to and including the entire DSL Footprint) after December 2, 2016. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions in each subset of the DSL Footprint proposed by Verizon Wireless, to determine whether such sales will adversely impact competition. If the United States determines, in its sole discretion, that such sales in any or all of the subsets of the DSL Footprint proposed by Verizon Wireless will adversely impact competition, it may deny the petition as to those subsets. The United States shall grant or deny such a petition within sixty (60) calendar days of receiving each such petition. This provision is without prejudice to and does not limit any Defendant's right to seek any modification of the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(5).

C. Notwithstanding V.A and V.B, Verizon Wireless may market Cable Services in national or regional advertising that may reach or is likely to reach street addresses in the FiOS Footprint or DSL Footprint, *provided that* Verizon Wireless does not specifically target advertising of Cable Services to local areas in which Verizon Wireless is prohibited from selling Cable Services pursuant to V.A and/or V.B. Further notwithstanding V.A and V.B, Verizon Wireless may, in any Verizon Store:

i. service, provide, and support Verizon Wireless Equipment sold by a Cable Defendant; and

ii. provide information regarding the availability of Cable Services, provided that Verizon Wireless does not enter any agreement requiring it to provide and does not receive any compensation for providing such information in any Verizon Store where Verizon Wireless is prohibited from selling Cable Services pursuant to V.A and/or V.B.

D. Verizon Wireless shall not enforce any Wireless Exclusivity Provision after December 2, 2016. Verizon Wireless may, at any time prior to 120 days before December 2, 2016, petition the United States to allow Verizon Wireless to enforce one or more Wireless Exclusivity Provisions after December 2, 2016. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine whether such exclusivity will adversely impact competition. If the United States determines, in its sole discretion, that such exclusivity will adversely impact competition, it may deny the petition. The United States shall grant or deny such a petition within sixty (60) calendar days of receiving each such petition. This provision is without prejudice to and does not limit any Defendant's right to seek any modification of the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(5). Nothing in the foregoing requires any Cable Defendant to enter into an agreement with any wireless carrier or to otherwise engage in activities that would have violated any Wireless Exclusivity Provision if such provision had continued in effect after December 2, 2016.

E. Defendants shall not at any time, without the prior written approval of the United States in its sole discretion, enter any technology-development Joint Venture or Partnership that will as a result of such entry include both a Verizon Defendant and a Cable Defendant.

F. Any Defendant that is a member of JOE LLC shall not, without the prior written approval of the United States, remain in the JOE LLC after December 2, 2016. However, any Defendant that is a member of JOE LLC may, at any time after 180 days before December 2, 2016, and prior to 150 days before December 2, 2016, petition the United States for permission to remain a member of JOE LLC. Upon such a request, the United States shall, in good faith, expeditiously examine market conditions to determine whether the Defendant's continued membership in JOE LLC will adversely impact competition. If the United States determines, in its sole discretion, that such continued membership will adversely impact competition, it may deny the petition. The United States shall grant or deny each such a petition within sixty (60) calendar days of receiving such petition. This provision is without prejudice to and does not limit any Defendant's right to seek any modification of the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(5).

G. Defendants shall not, without the prior written approval of the United States in its sole discretion, enter into or execute any amendment, supplement, or modification to the Commercial Agreements or the JOE

Agreement (including any amendments necessary to comply with this Final Judgment). This provision does not apply to: (1) agreements expressly permitted by V.I(1) or V.I(2) below, or (2) agreements changing the compensation that a Cable Defendant receives from Verizon Wireless for selling Verizon Wireless Services, provided that such changes are broadly implemented for both Cable Defendant and non-Cable Defendant agents of Verizon Wireless. The United States shall grant or deny a request for an exercise of its sole discretion pursuant to this paragraph within sixty (60) calendar days of receiving such a request.

H. Defendants shall not, without the prior written approval of the United States in its sole discretion, effect any change in any compensation Verizon Wireless receives from any Cable Defendant for selling Cable Services, except as otherwise provided for in the Commercial Agreements. The United States shall grant or deny a request for an exercise of its sole discretion pursuant to this paragraph within sixty (60) calendar days of receiving such a request.

I. No Verizon Defendant shall enter into any agreement with a Cable Defendant nor shall any Cable Defendant enter into any agreement with a Verizon Defendant providing for the sale of VZT Services, the sale of Verizon Wireless Services, the sale of Cable Services, or the joint development of technology or services without the prior written approval of the United States in its sole discretion. This provision does not apply to (1) agreements executed in connection with ordinary course implementation or operations of the Commercial Agreements or the JOE Agreement; (2) agreements executed in the ordinary course in connection with the sale of products or services pursuant to the Commercial Agreements or the JOE Agreement; (3) the negotiation of and entering into content agreements between the Verizon Defendants and Cable Defendants who provide video programming content; (4) the purchase, sale, license or other provision of commercial or wholesale products or services (including advertising and sponsorships) and the lease of space in the ordinary course among or between the Defendants; (5) any interconnection agreement between any Cable Defendant and the Verizon Defendants; or (6) any agreement in connection with broad-based industry technology development consortia or standards setting organizations. The United States shall grant or deny a request for an exercise of its sole discretion pursuant to this paragraph within sixty (60) calendar days of receiving such a request.

J. No Defendant shall participate in, encourage, or facilitate any agreement or understanding between VZT and a Cable Defendant relating to the price, terms, availability, expansion, or non-expansion of VZT Services or Cable Services. The foregoing does not apply to (1) intellectual property licenses between JOE LLC and VZT, (2) the negotiation of and entering into content agreements between Verizon Defendants and Cable Defendants who provide video programming content, (3) the purchase, sale, license or other provision of commercial or wholesale products or services (including advertising and sponsorships) and the lease of space in the ordinary course among or between the Defendants, or (4) any interconnection agreement between any Cable Defendant and the Verizon Defendants. However, in no event shall a Defendant participate in, encourage, or facilitate any agreement or understanding between VZT and a Cable Defendant that violates the antitrust laws of the United States.

K. No Verizon Defendant shall disclose competitively sensitive VZT information to any Cable Defendant, nor shall any Cable Defendant disclose any competitively sensitive Cable information to VZT. If a Cable Defendant discloses competitively sensitive Cable information to Verizon Wireless, Verizon Wireless shall take reasonable precautions to prevent such information from being communicated or otherwise made available to VZT. No employee of a Verizon Defendant shall have access to both competitively sensitive VZT information and competitively sensitive Cable information, except (1) to the extent sharing aggregated information is expressly permitted by the Commercial Agreements or the JOE Agreement, or (2) by Verizon Wireless officers or employees responsible for implementing or evaluating joint offers between Verizon Wireless and the Cable Defendants, and joint offers between Verizon Wireless and VZT.

VI. Document Retention and Disclosures

A. Within forty (40) calendar days of the filing of the Complaint in this matter, or ten (10) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, each Defendant shall deliver to the United States and the State of New York an affidavit that describes in reasonable detail all actions it has taken to comply with Sections IV and V of this Final Judgment. In the case of Verizon Wireless, such affidavit should include, but not be limited to, a description of the systems in place to identify whether a street address is within the FiOS Footprint prior to any sale of a Cable Service by Verizon Wireless. Each Defendant shall deliver to the United States and the State of New York an affidavit describing any changes to the efforts and actions outlined in its earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented. Notwithstanding the foregoing, Defendant Cox shall have no obligation to provide any such affidavits to the State of New York.

B. Within forty (40) calendar days of the filing of the Complaint in this matter, or ten (10) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, each Verizon Defendant shall submit to the United States and the State of New York a document setting forth in detail the procedures implemented to effect compliance with Section V.K of this Final Judgment. The United States shall notify the Defendant within ten (10) business days whether it approves of or rejects the Defendant's compliance plan, in its sole discretion. In the event that a Verizon Defendant's compliance plan is rejected, the reasons for the rejection shall be provided to the Defendant and that Defendant shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the United States and the Defendant cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether the Defendant's proposed compliance plan is reasonable.

C. Within ten (10) calendar days of executing any amendment or modification to the Commercial Agreements or the JOE Agreement, any Defendant that is a party to the amended or modified agreement shall furnish to the United States and the State of New York a copy of such amendment or modification, along with a narrative explanation of the purpose and effect of such amendment or modification. Notwithstanding the foregoing, Defendant Cox shall have no obligation to provide any such amendment, modification, or narrative explanation to the State of New York.

D. The Verizon Defendants shall furnish the periodic reports described in Appendix A by the respective deadlines established therein. Such reports may be modified by agreement between the United States and the Verizon Defendants. The obligation to furnish such reports shall expire ninety (90) calendar days after the later of: (1) the termination of all of the Commercial Agreements and (2) the date on which no Defendant is a member of JOE LLC.

E. The Cable Defendants shall collect and maintain all communications with the Verizon Defendants relating to the Commercial Agreements or the JOE Agreement. A Cable Defendant's obligation to collect and maintain such documents may be modified by agreement between the United States and the Cable Defendant. A Cable Defendant's obligation to collect and maintain such documents shall expire ninety (90) calendar days after the later of: (1) the termination of all of the Commercial Agreements and (2) the date on which no Defendant is a member of JOE LLC.

F. The Verizon Defendants shall collect and maintain all communications with the Cable Defendants relating to the Commercial Agreements or the JOE Agreement. The obligation to collect and maintain such documents may be modified by agreement between the United States and the Verizon Defendants. The obligation to collect and maintain such documents shall expire ninety (90) calendar days after the later of: (1) the termination of all of the Commercial Agreements and (2) the date on which no Defendant is a member of JOE LLC.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, of determining whether the Final Judgment should be modified or vacated, or of exercising any discretion granted by this Final Judgment, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division and, in conjunction with the United States, the Antitrust Bureau of the Office of the New York Attorney General, including consultants and other persons retained by the

United States and the State of New York, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or, in conjunction with the United States, the Antitrust Bureau of the Office of the New York Attorney General, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States and the State of New York, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section or pursuant to Section VI shall be divulged by the United States or the State of New York to any person other than an authorized representative of the (1) executive branch of the United States, (2) the Federal Communications Commission, or (3) the Office of the New York Attorney General, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States or the State of New York, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States or the State of New York shall give Defendants ten (10) business days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Antitrust Compliance and Education Program

Each Defendant shall:

A. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) calendar days of entry of the Final Judgment to its officers, directors, and senior executives, and to its employees whose job responsibilities involve management of JOE LLC or the implementation of any of the Commercial Agreements;

B. Furnish a copy of this Final Judgment and related Competitive Impact Statement to any person who succeeds to a position described in Section VIII.A within thirty (30) days of that succession;

C. Annually furnish to each person designated in Sections VIII.A and VIII.B a description and summary of the meaning and requirements of this Final Judgment and the antitrust laws generally. Such annual description and summary shall make clear that no provision of this Final Judgment permits conduct that would violate the antitrust laws, including but not limited to agreements related to prices or future build-out plans; and

D. Obtain from each person designated in Sections VIII.A and VIII.B, within sixty (60) days of that person's receipt of the Final Judgment, a certification that he or she (1) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Defendant; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Defendant and/or any person who violates this Final Judgment.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XI. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States or the State of New York to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any past, present, or future conduct, policy, or practice of the Defendants; provided, however, that nothing in this Final Judgment shall be construed to waive any jurisdictional defense of Defendant Cox to any investigation, claim, or action of the State of New York.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Anti trust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

Appendix A—Periodic Reports

1) Verizon Wireless shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the sales of Cable Services by Verizon Wireless. Such report shall state, separately for each calendar month since January 2012, for each Cable Defendant, and for each geographic area (as agreed to by the United States in its sole discretion), the number of sales of each Cable Service. Verizon Wireless shall furnish such report within thirty (30) calendar days of the entry of this Final Judgment, and every three (3) months thereafter.

2) Verizon Wireless shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the sales of VZT Services by Verizon Wireless. Such report shall state, separately for each calendar month since January 2012 and for each geographic area (as agreed to by the United States in its sole discretion), the number of sales of each VZT Service. Verizon Wireless shall furnish such report within thirty (30) calendar days of the entry of this Final Judgment, and every three (3) months thereafter.

3) Verizon shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the areas where Verizon has built out the capability to deliver FiOS Services. Such report shall contain the number of houses in each geographic area (as agreed to by the United States in its sole discretion) where FiOS Services are available, the number of houses in each geographic area (as agreed to by the United States in its sole discretion) where FiOS Services have become available for the first time in the previous twelve months, an estimate of the actual costs incurred by Verizon to make FiOS Services available to such houses, a disclosure of any franchise agreement entered into by Verizon within the previous twelve months, a disclosure of any request by Verizon to modify or cancel a franchise agreement in the previous twelve months, a disclosure of any breach of an obligation to build out the capability to deliver FiOS Services in the previous twelve months, an estimate of the number of houses in each geographic area (as agreed to by the United States in its sole discretion) where FiOS Services are expected to become available for the first time in the next twelve months, and an estimate of the number of houses in each geographic area (as agreed to by the United States in its sole discretion) that are expected to become available for the first time in the next five years. Verizon shall furnish such report within ninety (90) calendar days of the entry of this Final Judgment, and every year thereafter.

4) Verizon shall furnish to the United States (with a copy to the FCC and, as to information for the State of New York, to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding Verizon's DSL service. Such report shall state, separately for each month since January 2010, where available, and for each wire center, the number of households where Verizon offers DSL service, the average data revenue per Verizon residential DSL account, the number of lines subscribing to Verizon DSL service, the number of lines initiating Verizon DSL service, and the number of lines disconnecting Verizon DSL service. Such report shall further state, separately for each month since January 2010, where available, and for each of the United States, the number of lines subscribing to Verizon DSL service by speed tier, and the number of Verizon DSL lines identified in Verizon's system as disconnected to subscribe to a FiOS Service. Verizon shall furnish such report within ninety (90) calendar days of the entry of this Final Judgment, and every six (6) months thereafter.

5) Verizon Wireless shall furnish to the United States (with a copy to the FCC and to the Antitrust Bureau of the Office of the New York Attorney General) a periodic report regarding the activities of JOE LLC. Such report shall contain, at a minimum, a description of the technology and products under development by JOE LLC, a description of any products for sale employing technology developed by JOE LLC, a list of any pending patent applications assigned to JOE LLC, and a summary of any intellectual property licensing agreements entered into by JOE LLC. Verizon Wireless shall furnish such report within ninety (90) calendar days of the entry of this Final Judgment, and every year thereafter.

[FR Doc. 2012–20740 Filed 8–22–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,317]

Dana Holding Corporation, Power Technologies Group Division, Including On-Site Leased Workers From Manpower, Milwaukee, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 28, 2012 (received on July 6, 2012), the United Autoworkers Union requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Dana Holding Corporation, Power Technologies Group Division, Milwaukee, Wisconsin (subject firm). The negative determination was issued on April 30, 2012, and the Department's Notice of Determination will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift production of gaskets and exhausts to a foreign country nor did the subject firm or its customers increase reliance on imports during the relevant period.

The request for reconsideration alleged that increased aggregate imports of gaskets (and like and directly competitive articles) in 2011 and 2012, loss of business with a firm that employed a worker group eligible to apply for TAA, and increased imports of finished articles containing foreign-produced component parts like or directly competitive with the gaskets and exhausts produced by workers at the subject firm, contributed importantly to worker separations at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of August, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–20767 Filed 8–22–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,475]

Huntington Foam LLC, Fort Smith, AR; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 21, 2012, the State Workforce Office requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The negative determination was issued on May 16, 2012. Workers at the subject firm were engaged in activities related to the production of expandable polystyrene.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift production of polystyrene to a foreign country, nor did the subject firm or its customers report an increased reliance of imports of articles like or directly competitive with polystyrene.

The State has asserted that the subject firm supplied a component part to a firm that employed a worker group eligible to apply for TAA.

The Department has carefully reviewed the request for reconsideration and the existing record and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of August, 2012.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–20766 Filed 8–22–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *August 6, 2012 through August 10, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,407	GC Services Limited Partnership, GC Services.	El Paso, TX	March 9, 2011.
81,676	Gussco Manufacturing, LLC	Cedar Grove, NJ	June 1, 2011.
81,735	Carlisle Finishing LLC, A Division of International Textile Group.	Carlisle, SC	September 16, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,756	Bay Area Newsgroup East Bay, LLC, California Newspaper Partnership.	Walnut Creek, CA	June 15, 2011.
81,764	Schneider Electric USA, Inc	Peru, IN	June 28, 2011.
81,765	Newell Rubbermaid, Rubbermaid Consumer Division, Time Staffing, Great Work Employment Services.	Wooster, OH	June 14, 2011.
81,782	United Parcel Service, Inc., Ask, Spherion, Industrial Staffing, Adecco and Manpower.	Carrollton, TX	July 5, 2011.
81,783	Pricewaterhouse Coopers LLP (PWC), Internal Firm, Knowledge Service, Adverse Data, Off-Site Workers NJ, MN, IL.	Tampa, FL	July 3, 2011.
81,793	Altairnano, Inc., Leased Workers from Aerotek, Applied Staffing, etc., Remote Workers.	Reno, NV	July 10, 2011.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,768	AMG Resources Corporation, a subsidiary of AMG Industries Corporation.	Baltimore, MD	July 2, 2011.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,841	Heidtman Steel Products	Baltimore, MD	August 1, 2011.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,650	M–D Building Products, Inc., Etcon Employment Services.	Gainesville, GA	May 19, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,646	CalAmp Wireless Networks Corporation, Spherion Staffing.	Waseca, MN	
81,697	Global Solar Energy, Inc., Manpower, Randstad US, ResourceMFG, Volt Workforce.	Tucson, AZ	
81,731	Talgo, Inc., Patentes Talgo, S.L., Kelly Services, Triada Employment Services & Manpower.	Milwaukee, WI	
81,791	Fasco, Regal Beloit Corporation, Penmac Personnel Services.	Eldon, MO	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
81,844	NCO Financial Systems, Accounts Receivable Recovery Division.	Norcross, GA	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,749	Honeywell, Honeywell Int'l, Scanning & Mobility Div., Hand Held Products, Inc.	Blackwood, NJ	
81,867	Phoenix Services, RG Steel Sparrows Point LLC, Severstal Sparrows Point LLC, RG Steel LLC.	Sparrows Point, MD	

I hereby certify that the aforementioned determinations were issued during the period of *August 6, 2012 through August 10, 2012.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: August 15, 2012.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2012–20764 Filed 8–22–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 4, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 4, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Dated: Signed at Washington, DC, this 15th day of August 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[32 TAA petitions instituted between 8/6/12 and 8/10/12]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
81854	Shop Vac Corporation (Company)	Williamsport, PA	08/06/12	08/03/12
81855	VMC (State/One-Stop)	Redmond, WA	08/06/12	08/03/12
81856	Torus (State/One-Stop)	Jersey City, NJ	08/06/12	08/03/12
81857	Cordia Communications, Inc. (Workers)	Winter Garden, FL	08/06/12	08/04/12
81858	Microsemi—RFIS, Folsom (Company)	Folsom, CA	08/06/12	08/03/12
81859	PBS Coals, Inc. (Workers)	Friedens, PA	08/06/12	08/06/12
81860	Resolute Forest Products (Company)	Catawba, SC	08/06/12	08/03/12
81861	Marlatex Corporation (Company)	Belmont, NC	08/06/12	08/03/12
81862	Brockway Mould, Inc. (Union)	Brockport, PA	08/06/12	08/03/12
81863	Industrial Machine & Welding (Company)	Farmington, MO	08/07/12	08/07/12

APPENDIX—Continued

[32 TAA petitions instituted between 8/6/12 and 8/10/12]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
81864	IS One, Inc./E&R Industrial Sales (Workers)	East Syracuse, NY	08/07/12	07/30/12
81865	Sihi Pumps (Workers)	Grand Island, NY	08/07/12	07/31/12
81866	Acme Electric (Company)	Lumberton, NC	08/07/12	08/05/12
81867	Phoenix Services (State/One-Stop)	Sparrows Point, MD	08/07/12	08/06/12
81868	CCC Information Systems, Inc. (State/One-Stop)	Cerritos, CA	08/07/12	08/06/12
81869	Hartford Financial Services Group, Inc. (Company)	Simsbury, CT	08/07/12	08/06/12
81870	Hartford Financial Services Group, Inc. (Company)	Windsor, CT	08/07/12	08/06/12
81871	Fusion Contact Centers (Workers)	Santa Maria, CA	08/08/12	08/06/12
81872	Sykes, Inc. (Workers)	Langhorne, PA	08/08/12	08/07/12
81873	Legacy Custom Plastics LLC (State/One-Stop)	Clearwater, FL	08/09/12	08/08/12
81874	Parkway Knitting (Workers)	Hillsville, VA	08/09/12	07/23/12
81875	Darly Custom Technology, Inc., Engineering Design and Drafting Department (Company).	Windsor, CT	08/09/12	08/09/12
81876	Hartford Financial Services Group, Inc. (Company)	Overland Park, KS	08/09/12	08/08/12
81877	Hartford Financial Services Group, Inc. (Company)	San Antonio, TX	08/09/12	08/08/12
81878	Harsco Metals (Workers)	Warren, OH	08/09/12	08/07/12
81879	Wheeling Corrugating Company (Union)	Beech Bottom, WV	08/09/12	08/07/12
81880	RG Steel, LLC (Union)	Wheeling, WV	08/09/12	08/07/12
81881	NCO/APAC Teleservices (Workers)	Greensboro, NC	08/10/12	07/26/12
81882	Sabritec (State/One-Stop)	Irvine, CA	08/10/12	08/09/12
81883	United Steelworkers (USW), Local 9477 (State/One-Stop)	Baltimore, MD	08/10/12	08/09/12
81884	New CIDC Delaware Corporation (Company)	Cambridge, MA	08/10/12	08/06/12
81885	NCO Financial Systems (State/One-Stop)	Getzville, NY	08/10/12	08/09/12

[FR Doc. 2012–20765 Filed 8–22–12; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2011–10]

Remedies for Small Copyright Claims: Additional Comments

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: This is the second request for public comment pertaining to a study undertaken by the U.S. Copyright Office at the request of Congress on the topic of adjudicating small copyright claims. The study will assess whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing claims that have a relatively small economic value and will discuss, with appropriate recommendations, potential changes in administrative, regulatory, and statutory authority. At this time, the Office seeks additional comments on some of the possible alternatives. The Copyright Office also announces two public meetings following the comment period, to be held during November 2012 in New York and Los Angeles, respectively.

DATES: Comments are due September 26, 2012.

ADDRESSES: All comments and reply comments shall be submitted electronically. A comment page containing a comment form is posted on the Office Web site at *http://www.copyright.gov/docs/smallclaims*. The Web site interface requires commenting parties to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

Public Meetings: The public meeting in New York will be held in the Jerome Greene Annex of Columbia Law School, 410 West 117th Street, New York, New York 10027, on November 15, 2012 from 9:30 a.m. to 5:30 p.m. and on November 16, 2012 from 9:30 a.m. to 3:30 p.m. The public meeting in Los Angeles will be held in Room 1314 of the UCLA School of Law, 405 Hilgard Avenue, Los Angeles, California 90095, on November 26, 2012 from 9:30 a.m. to 5:30 p.m. and on November 27, 2012 from 9:30 a.m. to 3:30 p.m. The agendas and the process for submitting requests to participate in or observe one of these meetings will be published on the Copyright Office Web site no later than October 15, 2012.

FOR FURTHER INFORMATION CONTACT: Jacqueline Charlesworth, Senior Counsel, Office of the Register, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; or Catherine Rowland, Counsel, Office of Policy and International Affairs, by email at *crowland@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

At the request of Congress, the Copyright Office is conducting a study to assess whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing copyright infringement claims that have a relatively small economic value (''small copyright claims'' or ''small claims''), and to recommend potential changes in administrative, regulatory, and statutory authority to improve the adjudication of such claims. The Office published a general Notice of Inquiry in the fall of 2011 and received numerous comments regarding the current environment in which small copyright claims are (or are not) pursued and

possible alternatives to address concerns about the current system. See the original Notice of Inquiry, 76 FR 66758 (Oct. 27, 2011), and comments received in response thereto, which are posted on the Copyright Office Web site, at *http://www.copyright.gov/docs/smallclaims/comments/*. The Copyright Office also notes the roundtable discussion on small claims sponsored by George Washington University Law School (''GW'') on May 10, 2012. The GW discussion covered topics ranging from constitutional considerations to the definition of a ''small claim'' to potential features of a streamlined adjudicatory process, and included the participation of both the Copyright Office and the Patent and Trademark Office. *See http://www.uspto.gov/blog/director/entry/uspto_co_sponsors_ip_small.*

At this time, the Copyright Office seeks further input concerning how a copyright small claims system might be structured and function. Accordingly, the Office seeks responses on the specific subjects below (some of which were identified by the Office in its earlier Notice), including from parties who did not previously address those subjects, or those who wish to amplify or clarify their earlier comments or respond to the comments of others. (The Office has studied and will take into consideration the comments already received, so there is no need to restate previously submitted material.) A party choosing to respond to this Notice of Inquiry need not address every subject below, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted.

Subjects of Inquiry

Assuming a system for small copyright claims is created:

1. *Nature of tribunal/process.* Provide a general description of the small claims system you believe would work best. Should it be a streamlined process within the existing Article III court structure, or an alternative process administered by the Copyright Office, the Copyright Royalty Judges, and/or some other type of tribunal? If an alternative process, should it include a right of review by an Article III court? Should the process be adjudicatory in nature, or instead consist of, or include, arbitration or mediation, or be some combination of these? (See below for more specific questions on review/appeals and the potential role of arbitration and/or mediation.)

2. *Voluntary versus mandatory participation.* Explain whether the small claims process would best be structured as a voluntary or mandatory system. Should a prospective plaintiff with a claim that meets the small claims criteria retain the option of choosing the existing federal district court process instead? Should a defendant be permitted to opt out of the small claims forum in favor of federal district court? If one or both parties' participation in the small claims process is voluntary, what incentives—such as damages limitations, attorneys' fees awards, or other features—might be instituted to encourage voluntary participation by plaintiffs and/or defendants?

3. *Arbitration.* Explain what role, if any, arbitration might play in the small claims process. Should matters be decided through some sort of specialized arbitration? Would such arbitration be binding? If so, how would the arbitrator's award be enforced and under what circumstances, if any, could it be set aside (and how might the Federal Arbitration Act, 9 U.S.C. 1 *et seq.,* apply)? How would arbitrators be trained and selected? Are there any existing arbitration models that might be especially useful as a model for arbitrating small copyright claims?

4. *Mediation.* Explain what role, if any, mediation might play in the small claims system. Should parties be required to participate in mediation before proceeding with a more formal process? Would it be useful to offer a copyright-focused voluntary mediation service? How would mediators be trained and selected?

5. *Settlement.* Please comment on how the small claims process might be structured to encourage voluntary settlements in lieu of litigated proceedings. Should a plaintiff be required to make a settlement offer to a prospective defendant before proceeding with a claim? Should the defendant be required to respond?

6. *Location of tribunal(s).* Could the small claims tribunal be centrally located, or should there be regional venues? If centrally located, where should it be? If in multiple locations, what should those be?

7. *Qualifications and selection of adjudicators.* Who should the adjudicators be? If the small claims system is a streamlined process within the Article III court structure, is there a role for magistrate judges or staff attorneys? If it is an alternative process, what qualifications should the adjudicators have, and how should they be selected?

8. *Eligible works.* Are some types of copyrighted works more amenable to, or in need of, a small claims system than others? Should the small claims process be limited to certain classes of works, for example, photographs and illustrations, or should it be available for all types of copyrighted works?

9. *Permissible claims.* Discuss the types of claims that could or should be eligible for the small claims process. For example, should the process be limited solely to claims of infringement, or should it be possible to bring a related claim arising out of the same dispute, such as a Lanham Act claim? What about an infringement claim that is tied to a contractual issue, as in the case where the defendant is alleged to have infringed by exceeding the terms of a license? Should issues of copyright ownership be amenable to decision through the small claims process? What about a user's claim that a takedown notice contained a material misrepresentation in violation of the Digital Millennium Copyright Act (''DMCA''), 17 U.S.C. 512(f)?

10. *Permissible claim amount.* Assuming there would be a cap on the amount of damages that could be sought by a plaintiff or counterclaimant in the small claims process, what should that amount be? What is the rationale for the cap proposed? Should there be any independent analysis of the damages claim by the tribunal? Should it be permissible for a copyright owner to pursue multiple claims in the same proceeding provided that, either individually or, alternatively, in the aggregate, they do not exceed the cap? What if, during the course of the proceeding, additional infringements are discovered such that the plaintiff's potential damages exceed the cap? What if a defendant asserts a counterclaim that exceeds the cap?

11. *Permissible defenses and counterclaims.* Discuss what limitations, if any, there should be on the types of defenses and counterclaims that could be decided through the small claims process. For example, could a defense of fair use or independent creation be adjudicated through the process? What about defenses or counterclaims arising under the DMCA, such as an assertion that the plaintiff's claim is subject to one of the safe harbor provisions of 17 U.S.C. 512(a) through (d), or that a takedown notice violated 17 U.S.C. 512(f)? To the extent such defenses or counterclaims were not subject to adjudication through the small claims process and would require removal of the action to federal district court, would this provide defendants with a means to ''opt out'' of the small claims system in a substantial number of cases?

12. *Registration.* Should registration of the allegedly infringed work be required in order to initiate a claim through the small claims process or,

alternatively, should proof of filing of an application for registration suffice? Should the process permit claims to be brought for unregistered works? Should the registration status of a work affect the availability of statutory damages or recovery of attorneys' fees, assuming such remedies are available through the small claims process?

13. *Filing fee.* Discuss the merits of requiring a filing fee to pursue a claim through the small claims process and the amount, if any, that would be appropriate. Should the filing fee vary with the size of the claim? Are there existing standards that might be informative?

14. *Initiation of proceeding.* Explain what would be required to initiate a proceeding. Should some sort of attestation and/or a *prima facie* showing of infringement be required of a copyright owner with the initial filing? Should a copyright owner need to establish a *prima facie* case of infringement before the defendant is required to appear and, if so, how would it be determined that this requirement had been met? By what means would the defendant be served or otherwise notified of the action? Should a defendant that is sued in federal district court for copyright infringement be permitted to transfer the matter to the small claims tribunal if the plaintiff's alleged damages are within the small claims damages cap? Should a party who has been put on notice of an alleged infringement be able to initiate an action by seeking a declaratory judgment of no infringement?

15. *Representation.* Describe the role of attorneys or other representatives, if any, in a small claims copyright system. Should individual copyright owners be permitted to be represented by an attorney and/or a non-attorney advocate, in addition to appearing *pro se*? Should corporations and other business entities be permitted to appear through employees instead of attorneys?

16. *Conduct of proceedings.* Describe how the small claims proceeding would work. Could the process be conducted by paper submission, without the requirement of personal appearances? Should the tribunal have the option to hold teleconferences or videoconferences in lieu of personal appearances? Should non-party witnesses be permitted to participate and, if so, by what means? Should expert witnesses be permitted? Should the tribunal have any sort of subpoena power? Should there be an established time frame for adjudication of the matter?

17. *Discovery, motion practice and evidence.* Explain what types of discovery, if any, should be permitted in the small claims system. For example, should depositions (either oral or by written question), requests for production of documents, interrogatories and/or requests for admission be permitted and, if so, to what extent? Should motion practice be allowed and, if so, to what extent? What types of testimony and/or evidence should be accepted (e.g., written, oral, documentary, etc.), and what standards of admissibility, if any, should apply?

18. *Damages.* Describe the damages that would be available through the small claims system. Should damages be limited to actual damages, or could statutory damages also be awarded? If statutory damages were available, should they adhere to the existing statutory damages framework of 17 U.S.C. 504(c) (subject to any cap applicable in the small claims system), or could an alternative approach be adopted, such as a fixed amount to be awarded in the case of a finding of infringement?

19. *Equitable relief.* Describe the equitable relief, if any, that should be available through the small claims system. Should the small claims tribunal be able to grant declaratory relief, issue an injunction to halt the infringing use of a work, impose license terms (such as for the continued distribution of a derivative work) and/or award other forms of equitable relief?

20. *Attorneys' fees and costs.* Explain how attorneys' fees and costs might be handled within the small claims system. Should a prevailing plaintiff and/or defendant be entitled to recover its attorneys' fees and costs? If so, should such fees and costs be awarded according to the standards that have evolved under 17 U.S.C. 505, should they be awarded as a matter of course, or should other criteria apply? Should there be a limit on the amount of attorneys' fees that could be sought and/or awarded in the small claims system?

21. *Record of proceedings.* Describe the record of proceedings that should be kept by the tribunal. Should decisions of the tribunal be rendered in writing? Should they include factual findings, legal explanation and/or other analysis? Should the records be publicly available?

22. *Effect of adjudication.* Explain the nature and effect of a small claims adjudication. Should a decision of the small claims tribunal constitute a final and enforceable judgment (subject to any further review or appeal)? Should it be published and/or carry any precedential weight? Should it have any *res judicata* or collateral estoppel effect, or should it be limited to the specific activities at issue and parties in question?

23. *Enforceability of judgment.* With respect to monetary judgments and any equitable or other relief awarded by the small claims tribunal, through what means would such remedies be enforceable? Should there be any special procedures for enforcement? Are there existing judicial or nonjudicial resources that might be useful in this regard?

24. *Review/appeals.* Should there be a right of review or appeal and, if so, under what circumstances, and by or to what body or court? What would be the appropriate standard of review (e.g., *de novo,* clearly erroneous, abuse of discretion, etc.)? Aside from any applicable filing fee, should there be any conditions for seeking review (such as posting of a bond)? Should a prevailing party in a review or appeal process be entitled to recover its attorneys' fees or costs?

25. *Group claims.* Should multiple copyright owners or a trade association or other entity acting on behalf of copyright owners be permitted to pursue multiple infringement claims against a single defendant, or multiple defendants, in a single proceeding? Should there be specialized rules of standing or procedures to permit this within the small claims system?

26. *Frivolous claims.* How might the small claims system deter frivolous and unwarranted filings? What measures—such as the awarding of attorneys' fees or other financial sanctions, or the barring of copyright owners that have repeatedly pursued frivolous claims from further use of the small claims process—might be taken to discourage the assertion of bad faith or harassing infringement claims, defenses and counterclaims?

27. *Constitutional issues.* Comment on whether a small claims system might implicate any one or more of the following constitutional concerns—or any other constitutional issue—and, if so, how the particular concern might be addressed:

a. Separation of powers questions arising from the creation of specialized tribunals outside of the Article III framework, including how a right of review by an Article III court might impact the analysis;

b. The Seventh Amendment right to have a copyright infringement case tried to a jury, as confirmed in *Feltner* v. *Columbia Pictures Television, Inc.,* 523 U.S. 340 (1998);

c. Constitutional requirements for a court's assertion of personal jurisdiction, in particular when

adjudicating claims of a defendant located in another state; and/or

d. Due process considerations arising from abbreviated procedures that impose limitations on briefing, discovery, testimony, evidence, appellate review, etc.

28. *State court alternative.* As an alternative to creating a small claims system at a federal level, should the statutory mandate of exclusive federal jurisdiction for copyright claims be altered to allow small copyright claims to be pursued through existing state court systems, including traditional state small claims courts? What benefits or problems might flow from such a change?

29. *Empirical data.* Commenting parties are invited to cite and submit further empirical data (in addition to the anecdotal and survey information already cited or submitted to the Copyright Office in connection with this proceeding) bearing upon:

a. Whether copyright owners are or are not pursuing small infringement claims through the existing federal court process, and the factors that influence copyright owners' decisions in that regard, including the value of claims pursued or forgone;

b. The overall cost to a plaintiff and/or a defendant to litigate a copyright infringement action to conclusion in federal court, including costs and attorneys' fees, discovery expenditures, expert witness fees and other expenses (with reference to the stage of proceedings at which the matter was concluded);

c. The frequency with which courts award costs and/or attorneys' fees to prevailing parties pursuant to 17 U.S.C. 505, and the amount of such awards in relation to the underlying claim or recovery; and/or

d. The frequency with which litigants decline to accept an outcome in state small claims court and seek *de novo* review (with or without a jury trial) or file an appeal in a different court.

30. *Funding considerations.* Aside from filing fees, by what means might a small claims system be partially or wholly self-supporting? Should winning and/or losing parties be required to defray the administrative costs of the tribunal's consideration of their matter, in all or in part? If so, by what means? If the system consists of or includes arbitration or mediation, should parties bear the cost of these alternatives?

31. *Evaluation of small claims system.* Should the small claims system be evaluated for efficacy and, if so, how? Should it be subject to periodic review or adjustment? Should it be launched initially as a pilot program or on a limited basis?

32. *Other issues.* Are there any additional pertinent issues not identified above that the Copyright Office should consider in conducting its study?

Dated: August 20, 2012.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2012–20802 Filed 8–22–12; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316; NRC–2012–0199]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Unit 2, Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption and an amendment to Renewed Facility Operating License No. DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of Donald C. Cook Nuclear Plant, Unit 2 (CNP–2), located in Berrien County, Michigan, in accordance with §§ 50.12 and 50.90 of Title 10 of the Code of Federal Regulations (10 CFR). In accordance with 10 CFR 51.21, the NRC performed an environmental assessment documenting its findings as follows:

Environmental Assessment

Identification of the Proposed Actions

The proposed actions would issue an exemption from certain requirements of 10 CFR, Section 50.46 and Appendix K, regarding fuel cladding material, and revise the Technical Specifications document, which is Appendix A to Renewed Facility Operating License DPR–74, to permit use of a Westinghouse proprietary material, Optimized ZIRLO™, for fuel rod cladding. The licensee will be authorized to a peak load average burnup limit of 62 gigawatt-days per metric ton uranium (GWD/MTU).

The proposed actions are in accordance with the licensee's application dated September 29, 2011, as supplemented on July 25, 2012.

The Need for the Proposed Actions

The proposed actions to issue an exemption to the fuel cladding requirement of 10 CFR 50.46 and Appendix K, and to amend the Technical Specifications to permit use of Optimized ZIRLO™ clad fuel rods to a peak rod average burnup limit of 62 GWD/MTU would allow for more effective fuel management. If the exemption and amendment are not approved, the licensee will not be provided the opportunity to use Optimized ZIRLO™ fuel design with a peak rod average burnup as high as 62 GWD/MTU; the licensee would thus lose fuel management flexibility.

Environmental Impacts of the Proposed Actions

In this environmental assessment regarding the impacts of the use of Optimized ZIRLO™ clad fuel with the possible burnup up to 62 GWD/MTU, the Commission is relying on the results of the updated study conducted for the NRC by the Pacific Northwest National Laboratory (PNNL), entitled ''Environmental Effects of Extending Fuel Burnup Above 60 GWD/MTU'' (NUREG/CR–6703, PNNL–13257, January 2001). Environmental impacts of high burnup fuel up to 75 GWD/MTU were evaluated in the study, but some aspects of the review were limited to evaluating the impacts of the extended burnup up to 62 GWD/MTU, because of the need for additional data on the effect of extended burnup on gap release fractions. All the aspects of the fuel-cycle were considered during the study, from mining, milling, conversion, enrichment and fabrication through normal reactor operation, transportation, waste management, and storage of spent fuel.

The amendment and exemption would allow CNP–2 to use Optimized ZIRLO™ clad fuel up to a burnup limit of 62 GWD/MTU. The NRC staff has completed its evaluation of the proposed actions and concludes that such changes would not adversely affect plant safety, and would have no adverse effect on the probability of any accident. For the accidents that involve damage or melting of the fuel in the reactor core, fuel rod integrity has been shown to be unaffected by extended burnup under consideration; therefore, the consequences of an accident will not be affected by fuel burnup to 62 GWD/MTU. For the accidents in which the reactor core remains intact, the increased burnup may slightly change the mix of fission products that could be released, but because the radionuclides contributing most to the dose are short-lived, increased burnup would not have an effect on the consequences beyond the consequences of previously evaluated accident scenarios. Thus, there will be no significant increase in projected dose consequences of postulated accidents associated with fuel burnup up to 62 GWD/MTU, and

doses will remain well below regulatory limits.

Regulatory limits on radiological effluent releases are independent of burnup. The requirements of 10 CFR part 20, 10 CFR 50.36a, and Appendix I to 10 CFR part 50 ensure that routine releases of gaseous, liquid or solid radiological effluents to unrestricted areas is kept ''As Low As is Reasonably Achievable.'' Therefore, the NRC staff concludes that during routine operations, there would be no significant increase in the amount of gaseous radiological effluents released into the environment as a result of the proposed actions, nor will there be a significant increase in the amount of liquid radiological effluents or solid radiological effluents released into the environment.

The proposed actions will not change normal plant operating conditions (i.e., no changes are expected in the fuel handling, operational, or storing processes). The fuel storage and handling, radioactive waste, and other systems which may contain radioactivity are designed to assure adequate safety under normal conditions. There will be no significant changes in radiation levels during these evolutions, and no significant increase in the allowable individual or cumulative occupational radiation exposure is expected to occur.

The use of Optimized ZIRLO™ clad fuel with a burnup limit of 62 GWD/MTU will not change the potential environmental impacts of incident-free transportation of spent nuclear fuel or the accident risks associated with spent fuel transportation if the fuel is cooled for 5 years after being discharged from the reactor. A PNNL report for the NRC (NUREG/CR–6703, January 2001) concluded that doses associated with incident-free transportation of spent fuel with burnup to 75 GWD/MTU are bound by the doses given in 10 CFR 51.52, Table S–4 for all regions of the country, based on the dose rates from the shipping casks being maintained within regulatory limits. Increased fuel burnup will decrease the annual discharge of fuel to the spent fuel pool which will postpone the need to remove spent fuel from the pool.

NUREG/CR–6703 determined that no increase in environmental effects of spent fuel transportation accidents is expected as a result of increasing fuel burnup to 75 GWD/MTU.

Based on the nature of the amendment and exemption, these proposed actions do not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historic and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed actions. Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed actions.

For more detailed information regarding the environmental impacts of extended fuel burnup, please refer to the study conducted by PNNL for the NRC, entitled ''Environmental Effects of Extending Fuel Burnup Above 60 GWD/MTU'' (NUREG/CR–6073, PNNL–13257, January 2001, Accession No. ML010310298). The NRC staff's detailed safety review will be conveyed in the Safety Evaluation issued concurrently with the amendment.

Environmental Impacts of the Alternatives to the Proposed Actions

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. Thus, the environmental impacts of the proposed actions and the alternative action are similar.

Alternative Use of Resources

The proposed actions do not involve the use of any different resources than those previously considered in the Final Environmental Statement for Donald C. Cook Nuclear Plant, Unit 2, or the Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Donald C. Cook Nuclear Plant, Units 1 and 2—Final Report (NUREG–1437, Supplement 20), dated May 2005.

Agencies and Persons Consulted

In accordance with its stated policy, on June 1, 2012, the NRC staff consulted with the Michigan State official regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC staff concludes that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed actions, see the licensee's letters dated September 29, 2011, and July 25, 2012. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of August 2012.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–20743 Filed 8–22–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

Extension: Rule 17f–1(b), OMB Control No. 3235–0032, SEC File No. 270–28.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** of August 16, 2012, concerning its request for the Office of Management and Budget's (''OMB'') approval of an extension of the previously approved collection of information provided for in Rule 17f–1(b) (17 CFR 240.17f–1(b)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). The document contained an incorrect OMB Control Number.

FOR FURTHER INFORMATION CONTACT: Remi Pavlik-Simon, Securities and Exchange Commission, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Correction

In the **Federal Register** issue of Thursday, August 16, 2012, in FR Doc. 2012–20098, on page 49475, in the second line from the bottom of the second column, correct the OMB Control No. to read as noted above.

Dated: August 20, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20758 Filed 8–22–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on August 29, 2012 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to propose rules to eliminate the prohibition against general solicitation and general advertising in securities offerings conducted pursuant to Rule 506 of Regulation D under the Securities Act and Rule 144A under the Securities Act, as mandated by Section 201(a) of the Jumpstart Our Business Startups Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 21, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20901 Filed 8–21–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [77 FR 39749, July 5, 2012].

STATUS: Open Meeting.

PLACE: 100 F Street NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: August 22, 2012 at 10 a.m.

CHANGE IN THE MEETING: Deletion of an Item.

The following item will not be considered during the Commission's Open Meeting on August 22, 2012 at 10 a.m.:

The Commission will consider rules to eliminate the prohibition against general solicitation and general advertising in securities offerings conducted pursuant to Rule 506 of Regulation D under the Securities Act and Rule 144A under the Securities Act, as mandated by Section 201(a) of the Jumpstart Our Business Startups Act.

This item is being rescheduled for consideration at an Open Meeting on August 29, 2012 as announced in a separate meeting notice.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: August 21, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20900 Filed 8–21–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67680; File No. SR–Phlx–2012–106]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Modify Exchange Rule 3307 To Institute a Five Millisecond Delay in the Execution Time of Marketable Orders on NASDAQ OMX PSX

August 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 3307 to institute a five millisecond delay in the execution time of marketable orders on NASDAQ OMX PSX (''PSX''). The Exchange proposes to implement the proposed rule change within 30 days of Commission approval. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx,* at Phlx's principal office and at the Commission's Public Reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify Exchange Rule 3307 to institute a five millisecond delay in the execution time of marketable orders. The proposal will be implemented initially on a one-year pilot basis with respect to the trading of securities listed on the NASDAQ Stock Market (''Tape C Securities''). The Exchange introduced PSX, which features a unique price/size/pro-rata execution algorithm, in order to encourage market participants to display more liquidity in a transparent market environment. As among equally priced orders on the PSX book, PSX allocates execution opportunities in proportion to the size of the posted order, rather than its time of entry. Thus, the Exchange's market model is intended to deemphasize the importance of speed in realizing trading opportunities.

Although PSX has enjoyed a measure of success, the Exchange is concerned that slower liquidity providers that post on PSX are sometimes subject to suboptimal executions due to disparities in the speed with which market participants are able to react to market

information. Thus, in a circumstance where a broker posts a large order on PSX and changes in market conditions render the price of the order stale, a market participant with superior capabilities to process information may be able to route an order before the broker can change its price, thereby obtaining a fill at a price that is out of line with the price that will prevail in the market generally once the changes in the market conditions are fully digested. While the potential for a posted order to interact with orders entered by market participants with faster reaction capabilities responding to short-term information—sometimes referred to as ''toxic order flow''—exists on all markets, the larger posted sizes and pro rata allocation model on PSX may make the impact more pronounced, since fills are allocated among all market participants posting orders at a particular price.

It should also be noted that liquidity providers face asymmetric risks as compared with firms that seek to access liquidity opportunistically. To illustrate this point, consider the following example. Firm A is providing liquidity in 1,000 securities while Firm B is seeking opportunistically to access liquidity if it perceives a quote is mispriced. Both firms receive information (*e.g.,* index market data from a futures market) simultaneously that causes both to re-evaluate the fair value of all 1,000 securities quoted by Firm A. Firm A immediately seeks to update its quotes to reflect the change in fair value, while Firm B seeks to access those quotes before they are updated. If Firm B's orders are able to access a quote before it is updated, Firm A faces the risk of executing at stale prices in up to 1,000 securities. If, on the other hand, Firm A's updates are processed before Firm B's orders, Firm B faces the opportunity cost of failing to execute at the opportunistic price, but otherwise has no exposure as a result of its relative latency. As this illustrates, the risk of being technologically inferior is substantially higher for liquidity providers (Firm A is exposed to up to 1,000 mispriced executions) than for liquidity removers (Firm B has no executions).

In an effort to address these issues, the Exchange is proposing to institute a five millisecond delay in the time between when a marketable order is received by the PSX system and when it is presented for execution against the PSX book.[3] No information about the receipt of an incoming marketable order will be provided to any market participant before the order is presented for execution.[4] However, any updates or cancellations of resting orders that are received during the five millisecond period will be processed before the incoming order is presented for execution. After an order has been presented for execution, any unexecuted shares will be cancelled back to the member, routed, or posted to the book as applicable. As is the case with all orders on PSX, any price improvement will be allocated to the party that entered the incoming order. If the incoming order becomes non-marketable while it is being held, it will nevertheless continue to be held until the end of the five-millisecond period. In addition, the market participant entering the order may not cancel or modify it until the order has been presented at the end of the period.

With the change, the overall processing time for incoming marketable orders will still be extremely rapid—in most cases, about 5.075 milliseconds—and will be faster than the processing time for several existing exchange markets. However, the Exchange believes that the additional time will be sufficient to allow liquidity providers to make adjustments if they believe them to be warranted. Accordingly, the change will ''level the playing field'' between liquidity providers and opportunistic traders, consistent with the Exchange's goal of making PSX a market that rewards investors for the size of their trading interest rather than the speed of their trading algorithms.

Although the proposal will allow liquidity providers to adjust their quotes during the delay period after an order is received by PSX, the Exchange does not believe that the proposal presents any issues under the provisions of SEC Rule 602(b),[5] generally known as the ''firm quote rule.'' Subject to certain exceptions, paragraph (b)(2) of the rule provides:

> [E]ach responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.

However, paragraph (b)(3) provides that ''[n]o responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (b)(2) of this section if * * * [b]efore the order sought to be executed is presented, such responsible broker or dealer has communicated to its exchange or association pursuant to paragraph (b)(1) of this section, a revised bid or offer.'' The application of these provisions to the proposed rule change hinges on the word ''presented'': if an order executable against a quote is presented to a broker-dealer, it must be executed unless a revised quote has been communicated to the exchange before the order is presented. The rule does not define the term ''presented,'' nor do the relevant proposing and adopting releases shed extensive light on its interpretation.[6] The relevant dictionary definition of ''present''—to ''show or offer (something) for others to scrutinize or consider''[7]—suggests the need for awareness of a recipient of the thing that is presented. As a matter of logic, moreover, a broker-dealer should not be held responsible for executing an order of which it is not aware. Indeed, this would appear to be the purpose of the exception provided by paragraph (b)(3): a broker-dealer that has updated its quote before receiving a previously marketable order should not be required to provide an execution against its prior quote. Because, in the case of the proposed rule change, an incoming order will not attempt to execute until after the end of the five millisecond period, and no market participants will receive notice of the existence of the order during that time, the Exchange believes that it would be contrary to the purpose of this exception if a broker-dealer were required to honor its prior quote merely because the Exchange was temporarily holding an order of which the broker-dealer had no awareness.

Under Regulation NMS, a trading center that displays an ''automated quotation'' must ''immediately and

[3] Post-only orders and non-marketable orders with a time-in-force other than ''Immediate-or-Cancel'' will not be subject to the five millisecond delay.

[4] Because the incoming order will not be presented for execution against the resting quote until after the end of the five millisecond period, and no market participants will receive notice of the existence of the order during that time, the delay will not cause any compliance issues under SEC Rule 602(b), 17 CFR 242.602(b).

[5] 17 CFR 242.602(b).

[6] Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (August 5, 1976); Securities Exchange Act Release No. 13626 (June 14, 1977), 42 FR 32418 (June 24, 1977); Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978).

[7] *See www.oxforddictionaries.com.*

automatically'' execute an incoming order that is ''marked as immediate-or-cancel,'' up to the full size of the displayed quotation.[8] Moreover, the Commission stated that ''immediately'' means that ''a trading center's systems should provide the fastest response possible without any programmed delay.''[9] Thus, although PSX's response time will remain extremely rapid, the Exchange will mark PSX's quotations for Tape C Securities as ''manual quotations'' within the meaning of Regulation NMS. The Exchange notes, however, that in adopting Regulation NMS, the Commission ''emphasize[d] that adoption of Rule 611[10] in no way lessens a broker-dealer's duty of best execution.* * * The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.,* at the best reasonably available price.'' Accordingly, it is the Exchange's belief that market participants will be required to consider the price, size, accessibility, and cost of PSX's quotations in determining whether they have satisfied their best execution obligations.

The Exchange proposes adopting the change on a one-year pilot basis with respect to Tape C Securities only. This approach will allow the Exchange to compare trading patterns and market performance with respect to stocks subject to the pilot and those that are not. Based on this information, the Exchange will determine whether to expand the pilot, seek permanent approval for it, or allow it to lapse. The Exchange has selected Tape C Securities for the pilot because it believes that PSX's overall share volumes in Tape C (roughly comparable to its volumes for Tape A Securities and higher than for Tape B Securities[11]) and its percentage market share (higher than for Tape A Securities) will provide more useful data for assessing the effectiveness of the pilot. The Exchange reserves the right to submit a proposed rule change prior to the end of the pilot period in order to make such changes as it believes warranted.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the rule change will promote these goals by providing broker-dealers and investors that post liquidity with a better opportunity to adjust the prices of their orders to reflect changed market circumstances, thereby enhancing their ability to avoid so-called toxic order flow. The Exchange believes that firms willing to provide liquidity in large numbers of stocks provide benefits to investors and listed companies by supporting active markets in those stocks and dampening volatility. Specifically, the Exchange believes that widespread quoting activity benefits retail and institutional investors that have longer investment horizons and do not calibrate their purchases or sales to intraday variations in prices. As discussed above, however, as a firm becomes active in providing liquidity in a larger number of stocks, it faces greater challenges in ensuring that its quoted prices are up-to-date. If firms that wish to actively quote are unable to mitigate the asymmetric risks created by opportunistic traders, they are likely to decrease their quoting activity, rather than incur losses. Accordingly, the Exchange believes that it is appropriate to adopt the proposed rule change as a means to assist liquidity providers in mitigating these risks, and thereby encourage greater levels of liquidity provision in a wider range of stocks.

The Exchange does not believe that the proposal is unfairly discriminatory. Although the change may be seen as diminishing the ability of opportunistic traders to access quotes before they are updated to reflect changed market information, the Exchange believes that the anticipated benefits of the proposal in supporting liquidity provision and the interests of investors with longer trading horizons outweigh the potentially diminished profit opportunities for traders with shorter trading horizons. Moreover, because the Exchange's market share is small, the change will have little effect on the ability of traders to continue trading actively with a short-term focus on numerous other venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Although the change will delay the execution time for incoming marketable orders, the Exchange believes that the extremely fast overall processing time of 5.075 milliseconds should not be considered a burden on the ability of market participants to compete for order executions. Moreover, the Exchange believes that the change is appropriate in furtherance of the purposes of the Act because it will help liquidity providers to mitigate the asymmetric risks associated with opportunistic traders. The Exchange further believes that any burden on the ability of opportunistic traders to realize short-term trading opportunities on the Exchange will be minimal, because such opportunities will continue to exist on other trading venues. Moreover, the Exchange believes that any such burden will be outweighed by the benefits that it seeks to provide to support liquidity provision and the interests of investors with longer-term trading horizons.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] 17 CFR 242.600(b)(3).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37519 (June 29, 2005) (File No. S7–10–04).

[10] 17 CFR 242.611. Rule 611 provides that trading centers must establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks.

[11] Tape A Securities are listed on the New York Stock Exchange and Tape B Securities are listed on NYSE MKT and other ''regional'' exchanges.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–106 and should be submitted on or before September 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20711 Filed 8–22–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67681; File No. SR–NSX–2012–13]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Add Rule 3.21 Regarding Telephone Solicitation

August 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 2012, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II and III below, which Items have been prepared by the National Stock Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to add Rule 3.21, Telephone Solicitation, to its Rulebook to codify provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Rule 3.21, Telephone Solicitation, to its Rulebook to codify provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices. Rule 3.21 requires Equity Trading Permit (''ETP'') Holders to, among other things, maintain do-not-call lists, limit the hours of telephone solicitations, and not use deceptive and abusive acts and practices in connection with telemarketing. The Commission directed the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[3] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules [4] to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.[5]

In 1997, the Commission determined that telemarketing rules promulgated and expected to be promulgated by self-regulatory organizations, together with the other rules of the self-regulatory organizations, the federal securities laws and the Commission's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the FTC's telemarketing rules.[6] Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.[7]

[3] 15 U.S.C. 6101—6108.

[4] 16 CFR 310.1—.9. The FTC adopted these rules under the Prevention Act in 1995. *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995).

[5] 15 U.S.C. 6102.

[6] *See Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required,* Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions. *See id.*

[7] *See, e.g.,* FTC, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) (amendments to the *Telemarketing Sales Rule* relating to prerecorded

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[8] In May 2011, Commission staff directed the Exchange to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.[9] Commission staff had concerns ''that the [self-regulatory organization] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the [Prevention] Act.''[10]

The proposed rule change, as directed by the Commission staff, adopts provisions in Rule 3.21 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[11]

Telemarketing Restrictions

The proposed rule change codifies the telemarketing restrictions in Rule 3.21 to provide that no ETP Holder or person associated with an ETP Holder[12] may make an outbound telephone call[13] to:

(1) Any person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's locations;

(2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the ETP Holder; or

(3) any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[14] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[15]

Caller Disclosures

The proposed rule change codifies in Rule 3.21(b) that no ETP Holder or associated person of an ETP Holder shall make an outbound telephone call to any person without disclosing truthfully, promptly and in a clear and conspicuous manner to the called person the following information: (i) the identity of the caller and the ETP Holder; (ii) the telephone number or address at which the caller may be contacted; and (iii) that the purpose of the call is to solicit the purchase of securities or related services. The proposed rule change also provides that the telephone number that a caller provides to a person as the number at which the caller may be contacted may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.[16]

Exceptions

The proposed rule change adds Rule 3.21 to provide that the prohibition in paragraph (a)(1)[17] does not apply to outbound telephone calls by an ETP Holder or an associated person of an ETP Holder if:

(1) The ETP Holder has received that person's express prior written consent;

(2) The ETP Holder has an established business relationship[18] with the person; or

(3) The person is a broker or dealer.

ETP Holder's Firm-Specific Do-Not-Call List

The proposed rule change adds Rule 3.21(d) to provide that each ETP Holder must make and maintain a centralized list of persons who have informed the ETP Holder or any of its associated persons of an ETP Holder that they do not wish to receive outbound telephone calls. The proposed term ''outbound telephone calls'' is substantially similar to the FTC's definition of that term.[19]

Proposed Rule 3.21(d)(2) adopts procedures that ETP Holders must institute to comply with Rule 3.21(a)

messages and call abandonments); and FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) (amendments to the *Telemarketing Sales Rule* establishing requirements for sellers and telemarketers to participate in the national do-not-call registry).

[8] *See supra* note 4.

[9] *See* Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to Joseph Rizzello, Chief Executive Officer, National Stock Exchange (May 12, 2011).

[10] *Id.*

[11] The proposed rule change is also substantially similar to FINRA Rule 3230. *See supra* note 1.

[12] A ''person associated with an ETP Holder'' or ''associated person of an ETP Holder'' means any partner, officer, director, or branch manager of an ETP Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of an ETP Holder, except that any person associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms. *See* Rule 1.5(P)(1).

[13] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''telemarketer'' is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed Rule 3.21(n)(3), (11), (16), (17), (20), and (21); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), (cc), and (dd).

[14] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a). *See* proposed Rule 3.21(n)(16) and (21) and *supra* note 12.

[15] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[16] *See* proposed Rule 3.21(b); *see also* FINRA Rule 3230(d)(4). The proposed rule change is substantially similar to the FCC's regulations regarding call disclosures. *See* 47 CFR 64.1200(d)(4).

[17] The Exchange believes that even if an ETP Holder satisfies the exception in paragraph (c), the ETP Holder should still make the caller disclosures required by paragraph (b) to the called person to ensure that the called person receives sufficient information regarding the purpose of the call.

[18] An ''established business relationship'' is a relationship between an ETP Holder and a person if (a) the person has made a financial transaction or has a security position, a money balance, or account activity with the ETP Holder or at a clearing firm that provides clearing services to the ETP Holder within the 18 months immediately preceding the date of an outbound telephone call; (b) the ETP Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the ETP Holder to inquire about a product or service offered by the ETP Holder within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with an ETP Holder does not extend to the ETP Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with an ETP Holder's affiliate does not extend to the ETP Holder unless the person would reasonably expect the ETP Holder to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed Rule 3.21(n)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[19] *See* 16 CFR 310.4(b)(1)(iii)(A) and *supra* note 12; *see also* FINRA Rule 3230(a)(2). Additionally, this proposed rule change replaces a reference to the term ''member'' with ''ETP Holder,'' which conforms to the term currently used in NSX's Rules.

and (b) prior to engaging in telemarketing. These procedures must meet the following minimum standards:

(1) ETP Holders must have a written policy for maintaining their firm-specific do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the ETP Holder's firm-specific do-not-call list.

(3) If an ETP Holder receives a request from a person not to receive calls from that ETP Holder, the ETP Holder must record the request and place the person's name, if provided, and telephone number on its firm-specific do-not-call list at the time the request is made.[20]

(4) ETP Holders or associated persons of an ETP Holder making an outbound telephone call must make the caller disclosures set forth in Rule 3.21(b).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request will apply to the ETP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) An ETP Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on ETP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[21]

Do-Not-Call Safe Harbors

Proposed Rule 3.21(e) provides for certain exceptions to the telemarketing restriction set forth in proposed Rule 3.21(a)(3), which prohibits outbound telephone calls to persons on the FTC's national do-not-call registry. First, proposed Rule 3.21(e)(1) provides that an ETP Holder or associated person of an ETP Holder making outbound telephone calls will not be liable for violating proposed Rule 3.21(a)(3) if:

(1) The ETP Holder has an established business relationship with the called person; however, a person's request to be placed on the ETP Holder's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that ETP Holder even if the person continues to do business with the ETP Holder;

(2) The ETP Holder has obtained the person's prior express written consent, which must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act)[22] between the person and the ETP Holder that states that the person agrees to be contacted by the ETP Holder and includes the telephone number to which the calls may be placed; or

(3) The ETP Holder or associated person of an ETP Holder making the call has a personal relationship[23] with the called person.

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Second, proposed Rule 3.21(e)(2) provides that an ETP Holder or associated person of an ETP Holder making outbound telephone calls will not be liable for violating proposed Rule 3.21(a)(3) if the ETP Holder or associated person of an ETP Holder demonstrates that the violation is the result of an error and that as part of the ETP Holder's routine business practice:

(1) The ETP Holder has established and implemented written procedures to comply with Rule 3.21(a) and (b);

(2) The ETP Holder has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the preceding clause;

(3) The ETP Holder has maintained and recorded a list of telephone numbers that it may not contact in compliance with Rule 3.21(d); and

(4) The ETP Holder uses a process to prevent outbound telephone calls to any telephone number on the ETP Holder's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the FTC no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on a firm-specific do-not-call list or on the FTC's national do-not-call registry.[26] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[27]

Wireless Communications

Proposed Rule 3.21(f) clarifies that the provisions set forth in Rule 3.21 are applicable to ETP Holders and associated persons of an ETP Holder making outbound telephone calls to wireless telephone numbers.[28]

Outsourcing Telemarketing

Proposed Rule 3.21(g) states that if an ETP Holder uses another entity to perform telemarketing services on its behalf, the ETP Holder remains responsible for ensuring compliance with Rule 3.21. The proposed rule change also provides that an entity or person to which an ETP Holder outsources its telemarketing services must be appropriately registered or licensed, where required.[29]

Billing Information

The proposed Rule provides that, for any telemarketing transaction, no ETP Holder or associated person of an ETP Holder may submit billing information[30] for payment without the express informed consent of the customer. Proposed Rule 3.21(h) requires that each ETP Holder or associated person of an ETP Holder must obtain the express informed consent of the person to be charged and to be charged using the identified account.

If the telemarketing transaction involves preacquired account information[31] and a free-to-pay

[20] ETP Holders must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the ETP Holder on whose behalf the outbound telephone call is made, the ETP Holder on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[21] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[22] 15 U.S.C. 7001 *et seq.*

[23] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 3.21(n)(18); *see also* FINRA Rule 3230(m)(18).

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[25] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[26] *See* 16 CFR 310.4(b)(3); *see also* FINRA Rule 3230(c).

[27] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[28] *See also* FINRA Rule 3230(e).

[29] *See also* FINRA Rule 3230(f).

[30] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed Rule 3.21(n)(3).

[31] The term ''preacquired account information'' means any information that enables an ETP Holder or associated person of an ETP Holder to cause a charge to be placed against a customer's or donor's account without obtaining the account number

conversion[32] feature, the ETP Holder or associated person of an ETP Holder must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the ETP Holder or associated person of an ETP Holder must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand which account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[33] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[34]

Caller Identification Information

Proposed Rule 3.21(i) provides that ETP Holders that engage in telemarketing must transmit caller identification information[35] and are explicitly prohibited from blocking this information. The telephone number provided must permit any person to make a do-not-call request during normal business hours. These provisions are similar to the caller identification provision in the FTC rules.[36] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on ETP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[37]

Unencrypted Consumer Account Numbers

Proposed Rule 3.21(j) prohibits an ETP Holder or associated person of an ETP Holder from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[38] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[39] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[40]

Abandoned Calls

Proposed Rule 3.21(k) prohibits an ETP Holder or associated person of an ETP Holder from abandoning[41] any outbound telephone call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed Rule 3.21(k)(2) that requires an ETP Holder or associated person of an ETP Holder:

(1) To employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) For each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever an ETP Holder or associated person of an ETP Holder is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, promptly to play a prerecorded message stating the name and telephone number of the ETP Holder or associated person of an ETP Holder on whose behalf the call was placed; and

(4) To maintain records documenting compliance with the ''safe harbor.'' The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[42] The FTC provided a discussion of the provisions when they are adopted pursuant to the Prevention Act.[43]

Prerecorded Messages

Proposed Rule 3.21(l) prohibits an ETP Holder or associated person of an ETP Holder from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement[44] to receive such calls. The proposed rule change also requires that all prerecorded outbound telephone calls provide specified ''opt-out'' mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed Rule 3.21(k)(2). The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[45] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[46]

Credit Card Laundering

Proposed Rule 3.21(m) prohibits credit card laundering, the practice of depositing into the credit card system[47] a sales draft that is not the result of a credit card transaction between the

directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed Rule 3.21(n)(19).

[32] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed Rule 3.21(n)(13).

[33] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[34] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4616.

[35] Caller identification information includes the telephone number and, when made available by the ETP Holder's telephone carrier, the name of the ETP Holder.

[36] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[37] *See* 47 CFR 64.1601(e).

[38] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[39] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4615.

[40] *See id.* at 4616.

[41] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to an ETP Holder or associated person of an ETP Holder within two seconds of the called person's completed greeting.

[42] *See* 16 CFR 310.4(b)(1)(iv) and (b)(4); *see also* FINRA Rule 3230(j).

[43] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4641.

[44] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the ETP Holder to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the ETP Holder; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[45] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[46] *See* FTC, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) at 51165.

[47] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed Rule 3.21(n)(7), (8), and (10).

cardholder[48] and the ETP Holder. Except as expressly permitted, the proposed rule change prohibits an ETP Holder or associated person of an ETP Holder from:

(1) Presenting to or depositing into the credit card system for payment, a credit card sales draft[49] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder;

(2) Employing, soliciting, or otherwise causing a merchant,[50] or an employee, representative or agent of the merchant to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[51] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provision regarding credit card laundering.[52] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[53]

Definitions

Proposed Rule 3.21(n) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' ''telemarketer,'' and ''telemarketing.''[54] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.[55]

State and Federal Laws

Proposed Rule 3.21, Interpretation and Policy .01[56] reminds ETP Holders and associated persons of an ETP Holder that engage in telemarketing that they also are subject to the requirements of relevant state and federal laws and rules, including the Prevention Act, the Telephone Consumer Protection Act (''TCPA''),[57] and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.[58]

Announcement in Regulatory Circular

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 180 days following the effective date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.[59] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[60] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to, and to perfect the mechanism for, a free and open market and a national market system, and to protect investors and the public interest generally.

In particular, the proposed rule change will prevent fraudulent and manipulative acts and protect investors and the public interest by continuing to prohibit ETP Holders from engaging in deceptive and other abusive telemarketing acts or practices. Additionally, the proposed rule change removes impediments to and perfects the mechanism for a free and open market and a national market system, because it provides consistency among telemarketing rules of national securities exchanges and FINRA, therefore making it easier for investors to comply with these rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[61] of the Act and Rule 19b–4(f)(6)[62] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[48] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed Rule 3.21(n)(6).

[49] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed Rule 3.21(n)(9).

[50] The term ''merchant'' means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. *See* proposed Rule 3.21(n)(2) and (14).

[51] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. *See* proposed Rule 3.21(n)(15).

[52] *See* 16 CFR 310.3(c); *see also* FINRA Rule 3230(l).

[53] *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43852.

[54] *See* proposed Rule 3.21(n)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), (20), and (21); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), (cc), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed Rule 3.21(n)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(f)(14) (FCC's definition of ''personal relationship'').

[55] *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43843; and FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4587.

[56] *See also* FINRA Rule 3230, Supplementary Material .01, *Compliance with Other Requirements.*

[57] *See* 47 U.S.C. 227.

[58] *See* 47 CFR 64.1200.

[59] 15 U.S.C. 78f(b).

[60] 15 U.S.C. 78f(b)(5).

[61] 15 U.S.C. 78s(b)(3)(A).

[62] 17 CFR 240.19b-4(f)(6).

investors or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2012–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSX–2012–13. This file number should be included in the subject line if email is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. eastern time. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSX–2012–13 and should be submitted on or before September 13, 2012.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[63]

Elizabeth M. Murphy,

Secretary.

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[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67682; File No. SR–NYSEArca–2012–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of FlexShares Ready Access Variable Income Fund Under NYSE Arca Equities Rule 8.600

August 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 7, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): FlexShares Ready Access Variable Income Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares (''Shares'')[3] under NYSE Arca Equities Rule 8.600: FlexShares Ready Access Variable Income Fund (''Fund'').[4] The Shares will be offered by FlexShares Trust (''Trust''), a statutory trust organized under the laws of Maryland and registered with the Commission as an open-end management investment company.[5]

The investment adviser to the Fund will be Northern Trust Investments, Inc. (''Investment Adviser''). Foreside Fund Services, LLC will serve as the distributor for the Fund (''Distributor''). J.P. Morgan Chase Bank, N.A. will serve as the administrator, custodian, and transfer agent for the Fund (''Transfer Agent'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR–NYSEArca–2009–114) (order approving Exchange listing and trading of Grail McDonnell Fixed Income ETFs).

[5] The Trust is registered under the 1940 Act. On June 28, 2012, the Trust filed with the Commission a post-effective amendment to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Fund (File Nos. 333–173967 and 811–22555) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30068 (May 22, 2012) (File No. 812–13868) (''Exemptive Order'').

investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Investment Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. If a sub-adviser that is also affiliated with a broker-dealer is hired for the Fund, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Investment Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, adviser, or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

The Fund will not be an index fund. The Fund will be actively managed and will not seek to replicate the performance of a specified index.

According to the Registration Statement, the Fund will seek maximum current income consistent with the preservation of capital and liquidity. The Fund will seek to achieve its investment objective by investing under normal circumstances[7] at least 65% of its total assets in a non-diversified portfolio[8] of fixed income instruments, including bonds, debt securities, and other similar instruments issued by U.S. and non-U.S. public and private sector entities.[9] Such issuers include, without limitation, U.S. and non-U.S. governments and their subdivisions, agencies, instrumentalities, or sponsored enterprises, U.S. state and local governments, international agencies and supranational entities, and U.S. and non-U.S. private-sector entities, such as corporations and banks. The average portfolio duration[10] of the Fund will vary based on The Northern Trust Company Investment Policy Committee's forecast for interest rates and will normally not exceed one year. The dollar-weighted average portfolio maturity of the Fund is normally not expected to exceed two years.

According to the Registration Statement, the Fund will invest in debt securities that are, at the time of investment, rated within the top four rating categories by a Nationally Recognized Statistical Rating Organization (''NRSRO'') or of comparable quality as determined by the Investment Adviser.[11] Subsequent to its purchase by the Fund, a rated security may cease to be rated or its rating may be reduced below investment grade or a security may no longer be considered to be investment grade. In such case, the Fund is not required to dispose of the security. The Investment Adviser will determine what action, including potential sale, is in the best interest of the Fund.

The Fund may invest, without limitation, in fixed income instruments of foreign issuers in developed and emerging markets,[12] including, without limitation, debt securities of emerging-market foreign governments in the following regions: Asia and Pacific, Central and South America, Eastern Europe, Africa, and the Middle East. Within these regions, the Fund may invest in countries such as Brazil, Chile, China, Columbia, Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey, although this list may change as market developments occur and may include additional emerging market countries that conform to selected ratings, liquidity, and other criteria. Notwithstanding the foregoing, the Fund will not invest more than 20% of its total assets in fixed income

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Investment Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] According to the Registration Statement, the Fund will be ''non-diversified'' under the 1940 Act and may invest more of its assets in fewer issuers than ''diversified'' funds. The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5(b)(1)).

[9] According to the Registration Statement, ''fixed income instruments'' includes, but is not limited to: securities issued or guaranteed by the U.S. Government, its agencies, or government sponsored enterprises; corporate debt securities, including corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; bank capital and trust preferred securities; fixed and variable rate loan participations and assignments; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on fixed income instruments; and reverse repurchase agreements on fixed income instruments.

[10] According to the Registration Statement, duration measures the price sensitivity of a fixed-income security to changes in interest rates. Interest rate changes have a greater effect on the price of fixed-income securities with longer durations.

[11] In determining whether a security is of ''comparable quality,'' the Investment Adviser may consider, for example, whether the issuer of the security has issued other rated securities, whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any), whether and (if applicable) how the security is collateralized, other forms of credit enhancement (if any), the security's maturity date, liquidity features (if any), relevant cash flow(s), valuation features, other structural analysis, macroeconomic analysis, and sector or industry analysis.

[12] According to the Investment Adviser, while there is no universally accepted definition of what constitutes an ''emerging market,'' in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Investment Adviser will look at a variety of commonly-used factors when determining whether a country is an ''emerging'' market. In general, the Investment Adviser will consider a country to be an emerging market if:

(1) It is either (a) classified by the World Bank in the lower middle or upper middle income designation for one of the past 3 years (*i.e.,* per capita gross national product of less than U.S. $9,385), or (b) classified by the World Bank as high income in each of the last three years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (*e.g.,* Korea and Taiwan);

(2) the country's debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations; and

(3) the country has issued the equivalent of $5 billion in local currency sovereign debt.

The criteria used to evaluate whether a country is an ''emerging market'' will change from time to time based on economic and other events.

instruments of foreign issuers in emerging markets.[13]

Foreign debt securities include direct investments in non-U.S. dollar-denominated debt securities traded primarily outside of the United States and dollar-denominated debt securities of foreign issuers. The Fund will invest in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at the time of investment.[14] Foreign government obligations may include debt obligations of supranational entities, including international organizations (such as the European Coal and Steel Community and the International Bank for Reconstruction and Development, also known as the World Bank) and international banking institutions and related government agencies. The Fund also may invest in foreign time deposits and other short-term instruments. The Fund may invest a portion of its assets in the obligations of foreign banks and foreign branches of domestic banks.

The Fund may invest, without limitation, in mortgage- or asset-backed securities, other structured securities, including collateralized mortgage obligations (''CMOs''), and also including to-be-announced transactions (or ''TBA Transactions'').[15] A TBA Transaction is a method of trading mortgage-backed securities.[16] However, the Fund will not invest more than 10% of its total assets in non-agency[17] mortgage- or asset-backed securities.

The Fund may invest in variable and floating rate instruments. Variable and floating rate instruments have interest rates that periodically are adjusted either at set intervals or that float at a margin tied to a specified index rate. These instruments include variable amount master demand notes, long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date, and leveraged inverse floating rate instruments (''inverse floaters''). Some variable and floating rate instruments have interest rates that periodically are adjusted as a result of changes in inflation rates.

According to the Registration Statement, because there is no active secondary market for certain variable and floating rate instruments, they may be more difficult to sell if the issuer defaults on its payment obligations or during periods when the Fund is not entitled to exercise its demand rights. In addition, variable and floating rate instruments are subject to changes in value based on changes in market interest rates or changes in the issuer's or guarantor's creditworthiness.

According to the Registration Statement, the Fund may borrow money and enter into reverse repurchase agreements in amounts not exceeding one-fourth of the value of its total assets (including the amount borrowed). To the extent consistent with its investment objective and strategies, the Fund may enter into repurchase agreements with financial institutions such as banks and broker-dealers that are deemed to be creditworthy by the Investment Adviser and may invest a portion of its assets in custodial receipts.

Other Investments

According to the Registration Statement, the Fund may engage in forward foreign currency transactions for hedging purposes in order to protect against uncertainty in the level of future foreign currency exchange rates, to facilitate local settlements, or to protect against currency exposure in connection with its distributions to shareholders.[18] The Fund, however, does not expect to engage in currency transactions for speculative purposes (*e.g.,* for potential income or capital gain). A forward currency exchange contract is an obligation to exchange one currency for another on a future date at a specified exchange rate.

According to the Registration Statement, to the extent consistent with its investment policies, the Fund may hold up to 15% of its net assets in securities that are illiquid (calculated at the time of investment), including Rule 144A Securities and master demand notes.[19] The aggregate value of all of the

[13] The Fund may invest more than 25% of its total assets in fixed income securities and instruments of issuers in a single developed market country.

[14] The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have $200 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 20% of its net assets in corporate bonds with less than $200 million par amount outstanding, including up to 5% of its assets in corporate bonds with less than $100 million par amount outstanding, if (i) the Investment Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of seeking maximum current income consistent with the preservation of capital and liquidity, and (iii) such investment is deemed by the Investment Adviser to be in the best interest of the Fund.

[15] According to the Registration Statement, in addition to credit and market risk, asset-backed securities may involve prepayment risk because the underlying assets (loans) may be prepaid at any time. Prepayment (or call) risk is the risk that an issuer will exercise its right to pay principal on an obligation held by the Fund (such as a mortgage-backed security) earlier than expected. This may happen during a period of declining interest rates. Under these circumstances, the Fund may be unable to recoup all of its initial investment and will suffer from having to reinvest in lower yielding securities. The loss of higher yielding securities and the reinvestment at lower interest rates can reduce the Fund's income, total return, and share price. The value of these securities also may change because of actual or perceived changes in the creditworthiness of the originator, the service agent, the financial institution providing the credit support, or the counterparty. Like other fixed-income securities, when interest rates rise, the value of an asset-backed security generally will decline. Credit supports generally apply only to a fraction of a security's value. However, when interest rates decline, the value of an asset-backed security with prepayment features may not increase as much as that of other fixed-income securities. In addition, non-mortgage asset-backed securities involve certain risks not presented by mortgage-backed securities. Primarily, these securities do not have the benefit of the same security interest in the underlying collateral. If the issuer of the security has no security interest in the related collateral, there is the risk that the Fund could lose money if the issuer defaults.

[16] In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

[17] ''Non-agency'' securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Federal Home Loan Banks, or the Government National Mortgage Association (''Ginnie Mae'').

[18] According to the Registration Statement, liquid assets equal to the amount of the Fund's assets that could be required to consummate forward contracts will be segregated except to the extent the contracts are otherwise ''covered.'' The segregated assets will be valued at market or fair value. If the market or fair value of such assets declines, additional liquid assets will be segregated daily so that the value of the segregated assets will equal the amount of such commitments by the Fund. A forward contract to sell a foreign currency is ''covered'' if the Fund owns the currency (or securities denominated in the currency) underlying the contract, or holds a forward contract (or call option) permitting the Fund to buy the same currency at a price that is (i) no higher than the Fund's price to sell the currency or (ii) greater than the Fund's price to sell the currency provided the Fund segregates liquid assets in the amount of the difference. A forward contract to buy a foreign currency is ''covered'' if the Fund holds a forward contract (or call option) permitting the Fund to sell the same currency at a price that is (i) as high as or higher than the Fund's price to buy the currency or (ii) lower than the Fund's price to buy the currency provided the Fund segregates liquid assets in the amount of the difference.

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment

Continued

Fund's illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of the Fund's total assets. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

The Fund may purchase and sell securities on a when-issued, delayed delivery or forward commitment basis. The Fund also may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts (such as buy backs or mortgage dollar rolls).

The Fund may temporarily hold cash and cash-like instruments or invest in short-term obligations pending investment or to meet anticipated redemption requests. The Fund also may hold up to 100% of its total assets in cash or cash-like instruments or invest in short-term obligations as a temporary measure mainly designed to limit the Fund's losses in response to adverse market, economic, or other conditions. The Fund may not achieve its investment objective when it holds cash or cash-like instruments, or invests its assets in short-term obligations or otherwise makes temporary investments. The Fund also may miss investment opportunities and have a lower total return during these periods.

According to the Registration Statement, the Fund may not purchase or sell physical commodities unless acquired as a result of ownership of securities or other instruments.

According to the Registration Statement, the Fund may not concentrate its investments (*i.e.*, invest 25% or more of its total assets in the securities of a particular industry or industry group).[20] For purposes of this limitation, securities of the U.S. government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Fund may invest in the securities of other investment companies. Such investments will be limited so that, as determined after a purchase is made, either: (a) not more than 3% of the total outstanding stock of such investment company will be owned by the Fund, the Trust as a whole, and its affiliated persons (as defined in the 1940 Act); or (b) (i) not more than 5% of the value of the total assets of the Fund will be invested in the securities of any one investment company, (ii) not more than 10% of the value of its total assets will be invested in the aggregate securities of investment companies as a group, and (iii) not more than 3% of the outstanding voting stock of any one investment company will be owned by the Fund. These limits will not apply to the investment of uninvested cash balances in shares of registered or unregistered money market funds whether affiliated or unaffiliated. The foregoing exemption, however, only applies to an unregistered money market fund that (i) limits its investments to those in which a money market fund may invest under Rule 2a–7 of the 1940 Act, and (ii) undertakes to comply with all the other provisions of Rule 2a–7.

Investments by the Fund in other investment companies, including exchange-traded funds (''ETFs''),[21] will be subject to the limitations of the 1940 Act except as expressly permitted by Commission orders. The Fund also may invest in other types of U.S. exchange-traded products, such as Exchange-Traded Notes.[22]

The Fund intends to qualify as a regulated investment company under Subchapter M of Subtitle A, Chapter 1, of the Internal Revenue Code.[23]

The Fund will not invest in any non-U.S registered equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's benchmark (*i.e.*, the Citigroup 3-Month Treasury Bill Index).

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Investment Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[24] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the

Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[20] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.*, Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[21] For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

[22] For purposes of this proposed rule change, Exchange Traded Notes are securities registered under the 1933 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

[23] 26 U.S.C. 851. According to the Registration Statement, to qualify for treatment as a regulated investment company, the Fund must meet three tests each year. First, the Fund must derive with respect to each taxable year at least 90% of its gross income from dividends, interest, certain payments with respect to securities loans, gains from the sale or other disposition of stock or securities or foreign currencies, other income derived with respect to the Fund's business of investing in stock, securities or currencies, or net income derived from interests in qualified publicly traded partnerships. Second, generally, at the close of each quarter of the Fund's taxable year, at least 50% of the value of the Fund's assets must consist of cash and cash items, U.S. government securities, securities of other regulated investment companies, and securities of other issuers as to which (a) the Fund has not invested more than 5% of the value of its total assets in securities of the issuer and (b) the Fund does not hold more than 10% of the outstanding voting securities of the issuer, and no more than 25% of the value of the Fund's total assets may be invested in the securities of (1) any one issuer (other than U.S. government securities and securities of other regulated investment companies), (2) two or more issuers that the Fund controls and which are engaged in the same or similar trades or businesses, or (3) one or more qualified publicly traded partnerships. Third, the Fund must distribute an amount equal to at least the sum of 90% of its investment company taxable income (net investment income and the excess of net short-term capital gain over net long-term capital loss), before taking into account any deduction for dividends paid, and 90% of its tax-exempt income, if any, for the year.

[24] 17 CFR 240.10A–3.

Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'')[25] per Share will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

Creations and Redemptions of Shares

According to the Registration Statement, prior to trading in the secondary market, Shares of the Fund will be ''created'' at NAV by authorized participants only in block-size ''Creation Units'' of 50,000 Shares or multiples thereof, provided, however, that from time to time the Fund may change the number of Shares (or multiples thereof) required for each Creation Unit, if the Fund determines that such change would be in the best interests of the Fund. A creation transaction, which is subject to acceptance by the Transfer Agent, generally will take place when an authorized participant deposits into the Fund cash and/or a designated portfolio of instruments approximating the holdings of the Fund in exchange for a specified number of Creation Units. Similarly, Shares can be redeemed only in Creation Units, for cash and/or in-kind for a portfolio of instruments held by the Fund (''Fund Securities''). Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, under certain circumstances.

Except when aggregated in Creation Units, Shares will not be redeemable by the Fund. The prices at which creations and redemptions occur will be based on the next calculation of NAV after an order is received in a form described in the authorized participant agreement.

With respect to the Fund, the Investment Adviser will make available through the National Securities Clearing Corporation (''NSCC'') prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.) on each business day, the Fund Securities that will be applicable (subject to possible correction) to redemption requests received in proper form on that day. Unless cash redemptions are specified for the Fund, the redemption proceeds for a Creation Unit will generally consist of the Fund Securities as announced by the Investment Adviser through the NSCC on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee described in the Registration Statement (''Cash Redemption Amount''). In the event that the Fund Securities have a value greater than the NAV of the Fund Shares, a compensating cash payment equal to such difference will be required to be made by or through an authorized participant by the redeeming shareholder.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

Availability of Information

The Trust's Web site (*www.flexshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's NAV, last reported closing price and the mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[26] and a calculation of the premium and discount of the Bid/Ask Price or closing price against the NAV (as appropriate), and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price or closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m., E.T. to 4:00 p.m., E.T.) on the Exchange, the Fund will disclose on *www.flexshares.com* the identities and quantities of the Fund's portfolio holdings that will form the basis for the Fund's calculation of NAV at the end of the business day.[27]

On a daily basis, the Fund will disclose on *www.flexshares.com* for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of securities and financial instruments, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the securities and financial instruments in the portfolio. The Web site information will be publicly available at no charge. In addition, price information for the debt securities, fixed income instruments, and other investments, including forwards and securities of other investment companies, held by the Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the

[25] The NAV of the Fund is generally determined once daily Monday through Friday generally as of the regularly scheduled close of business of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern Time (''E.T.'')) on each day that the NYSE is open for trading. The NAV of the Fund is calculated by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of outstanding Shares of the Fund, generally rounded to the nearest cent. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

[26] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[27] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Consolidated Tape Association (''CTA'') high-speed line.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[28] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[29] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[30]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[31] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund will invest under normal circumstances at least 65% of its total assets in a non-diversified portfolio of fixed income investments. The Fund will invest in debt securities that are considered to be investment grade at the time of investment. The Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund will not invest in any non-U.S registered equity securities. The aggregate value of all of the Fund's illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of

[28] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[29] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[30] For a list of the current members of ISG, see *http://www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[31] 15 U.S.C. 78f(b)(5).

the Fund's total assets. The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have $200 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment. The Fund will not invest more than 20% of its total assets in fixed income instruments of foreign issuers in emerging markets. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. Price information for the debt securities, fixed income instruments, and other investments, including forwards and securities of other investment companies, held by the Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Investment Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, the Fund's Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–82. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–82 and should be submitted on or before September 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20713 Filed 8–22–12; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67683; File No. SR–Phlx–2012–105]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Regarding Treasury Securities Options

August 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposal to implement twenty-five new rules in the 1000D Series of rules so that the Exchange may list options on Treasury securities[3] and allow trading thereon.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to implement Exchange Rules 1000D through 1025D (the ''1000D Series''), which would, in conjunction with current applicable Exchange rules and procedures, allow the Exchange to list options on Treasury securities (''Treasury securities options''). The Exchange could then allow trading on Treasury securities options.

Background

Treasury securities are direct debt obligations issued by the U.S. government that are used by the government to raise capital and/or make payments on outstanding debt and by traders and investors, both in the underlying form and as derivatives proposed by this filing, as trading, investing, and hedging vehicles. Since Treasury securities are backed by the full faith and credit of the U.S. government, they are generally considered to have low risk and typically carry lower yields than other debt securities. Marketable Treasury securities are initially sold in a scheduled auction process and thereafter trade in a secondary market that is recognized as among the most liquid and extensively reported in the world.

The Exchange believes that the prices of Treasury securities are widely disseminated, active, and visible to traders and investors. In addition, the Exchange intends to get real-time Treasury prices (data) from a market data provider so that it can use this data in support of the Exchange's market, regulatory and surveillance operations. The Exchange intends to use this data for the purpose of opening and determining settlement values for Treasury options. Thirty days prior to the start of trading the Exchange would make an announcement, via an Options Trader Alert (''OTA''), to its member organizations regarding the details of the proposed real-time Treasury price offering.[5]

The secondary market for Treasury securities is an over-the counter (''OTC'') market in which participants trade with one another on a bilateral basis rather than on an organized exchange (Treasury securities can trade at the New York Stock Exchange, but trading in that market is negligible). Trading activity takes place between primary dealers; non-primary dealers; and customers of these dealers, including financial institutions, nonfinancial institutions, and individuals. There are a variety of databases providing bond information, including information regarding the listing and/or trading location of a bond, such as, for example, Govpx, Standard

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Subsection (a)(1) of proposed Rule 1001D states that the term ''Treasury securities'' (also known as Treasury debt securities) means a bond or note or other evidence of indebtedness that is a direct obligation of, or an obligation guaranteed as to principal or interest by, the United States or a corporation in which the United States has a direct or indirect interest (except debt securities guaranteed as to timely payment of principal and interest by the Government National Mortgage Association). Securities issued or guaranteed by individual departments or agencies of the United States are sometimes referred to by the title of the department or agency involved (e.g. a ''Treasury security'' is a debt instrument that is issued by the United States Treasury).

[4] Exchange listing and trading rules are organized as noted. Generally, rules applicable to equity and currency options can currently be found at Rule 1000 *et seq.;* rules applicable to index options can be found at Rule 1000A *et seq.;* rules applicable to cash index participations can be found at Rule 1000B *et seq.;* and rules applicable to PHLX Forex Options can be found at Rule 1000C *et seq.* Rules applicable to Treasury security options are being proposed at Rule 1000D *et seq.*

[5] On the basis of the real-time Treasury data that the Exchange is able to get, it is considering offering an alternative Treasury data feed to those Exchange members that may desire to acquire such data from the Exchange. As the Exchange notes in the proposal, however, Treasury data is readily available to the investing public from numerous sources including broker dealers. Based on a review of many broker/dealers offering Treasury securities to their customers, the Exchange believes that broker dealers typically do not offer new options classes to customers for trading unless these brokers have an ability to provide transparent, real-time prices for the underlying in addition to options chains.

& Poor's Bond Guide, the Mergent Bond Record, First Data Services' BORAS, Bloomberg, and the Commission's EDGAR internet service.[6] Whereas options on Treasury securities will be cleared by The Options Clearing Corporation (''OCC'') as discussed, the underlying securities will be cleared at the National Securities Clearing Corporation (''NSCC'') or the Fixed Income Clearing Corporation (''FICC''), as applicable.

This filing would allow the Exchange, as permissible by rule on other options exchanges,[7] to list and trade standardized options[8] on two specific types of marketable on-the-run Treasury securities issued by the Treasury: notes and bonds.[9] These options overlie individual underlying Treasury securities. Such options having a specifically identified underlying Treasury security will be known as ''specific cusip options.'' Similarly to equity and index options, these would be required to be delivered upon exercise.[10]

The Exchange specifically limits its proposal to listing options on on-the-run Treasury securities.[11] Because on-the-run (as opposed to off-the-run) Treasury securities are most recently issued U.S. Treasury bonds or notes and are most frequently traded securities of a maturity, they are extremely liquid and afford excellent price discovery.[12] Being the most liquid, on-the-run Treasury securities typically are a little bit more expensive and yield less than their off-the-run counterparts; when market commentators quote price or yield of Treasury securities, they generally refer to on-the-run Treasury securities.[13] As we have discussed, the prices of Treasury securities, particularly those that are on-the-run, are readily quoted and offered by numerous public sources and broker dealers; and, the prices are also available from exchanges that trade derivatives on Treasuries.[14]

The secondary Treasury securities market that would underlie the proposed Treasury options is clearly one of the biggest, most liquid securities markets in the world. This is indisputable and supported by the huge trading volumes of Treasury securities, as discussed below. In their 2012 study, Pasquariello, Roush, and Vega, state regarding their study of the secondary market for U.S. Treasury notes and bonds: ''The secondary market for these securities is among the largest, most liquid financial markets * * * [a]verage trading volumes are high and quoted bid-ask spreads are small * * *'' We note the highly liquid nature of the Treasury securities market is similar to the highly liquid nature of the foreign exchange market, where the Commission recently approved the listing of options on foreign exchange (''forex'') currencies (''PHLX FOREX options'').[15] In 2010 and 2011, for example, according to SIFMA, the average daily trading volume (notional value) of Treasury securities traded by primary dealers was $528.2 Billion and $576.8 Billion respectively, and in 2010, according to the BIS Triennial Survey, the average daily turnover (notional value) of the forex market was $4.0 Trillion.[16] The Exchange strongly believes that just as the Commission approved options overlying the very liquid forex market, so it should approve proposed options overlying the correspondingly liquid Treasury market.

The Exchange believes that the ability to trade standardized options overlying Treasury securities as proposed in this filing would serve an important economic function. In particular, such options could be used by a wide range of investors and traders that may be sensitive to, among other things, the potential price risk of alternative underlying securities and interest rate changes. Through the use of various option purchasing, writing (selling), and combination strategies, investors and

[6] The prices of Treasury Securities are widely disseminated, active and visible. There is a high level of price transparency for Treasury securities because of extensive price dissemination to the investing public (e.g. commercial and investment banks, insurance companies, pension funds, mutual funds, and retail investors) of price information by information vendors. These information vendors include an industry-sponsored corporation, Govpx, that disseminates price and real-time trading volume information for Treasury securities via interdealer broker screens.

Moreover, retail brokers (e.g. Fidelity, TD Ameritrade, E*TRADE, Charles Schwab, Interactive Brokers, and Scottrade) offer market access and the ability to purchase and sell Treasury securities on a real time basis, similarly to equity securities. For example, on May 8, 2012, Fidelity Investments displayed live bid/ask quotes with size offered on its retail brokerage Web site for the current on-the-run 30-YR Treasury bond (the 3.125% bond due February 15, 2042) and the previous seventeen issued on-the-run 30-YR Treasury bonds starting with the due date of February 15, 2036. On-the run Treasury securities are generally the most recently issued U.S. Treasury bonds or notes of a particular maturity. The Exchange believes that the majority of broker/dealers in the U.S. offer readily available on-the-run Treasury prices.

[7] *See* Chicago Board Options Exchange (''CBOE'') rules 21.1–21.31. *See also* Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 63423 (December 31, 1981) (SR–Amex–81–1; SR–CBOE–81–27) (order initially approving CBOE and Amex (now NYSE Amex) to list and trade options contracts on securities issued by the U.S. Treasury). The Exchange does not believe that currently these markets list options on debt securities issued by the U.S. Treasury or Government.

[8] Standardized options are options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange that relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate. 17 CFR 240.9b–1(a)(4). Standardized options are cleared by the OCC, which takes the position of counter-party in such transactions.

[9] Subsections (a)(2) and (a)(3) of proposed Rule 1001D, respectively. Other types of marketable securities issued by the Treasury (e.g. Treasury Inflation Protected Securities or TIPS) and non-marketable Treasury securities (e.g. government savings bonds) are not instruments that may underlie options for listing and trading.

[10] Subsection (a)(4) of proposed Rule 1001D.

[11] Proposed Rule 1006D.

[12] Upon completion of a Treasury auction, the most recently issued note or bond becomes on-the-run and the previous on-the-run issue goes off-the-run. The Exchange will only offer options that overlie the extremely liquid on-the-run Treasury securities, whose prices are readily available and are quoted by the media and various informational Web sites.

[13] For additional information about on-the run Treasury securities, *see http://www.investopedia.com/terms/o/on-the-runtreasuries.asp#axzz1zlFBaVZT.* The Treasury department uses on-the-run Treasury securities values to calculate daily yield curve rates at *http://www.treasury.gov/resource-center/data-chart-center/interest-rates/pages/textview.aspx?data=yield.*

For a recent academic study that uses on-the-run Treasury securities because of their liquidity, *see* Government Intervention and Strategic Trading in the U.S. Treasury Market, by Paolo Pasquariello, Jennifer Roush, and Clara Vega, June 2012. Pasquariello, Roush and Vega note that they specifically ''* * * focus on on-the-run issues because those securities display the greatest liquidity and informed trading.'' *See also* Measuring Treasury Market Security, by Michael J. Fleming, FRBNY Economic Policy Review/September 2003 (''Even though on-the-run securities represent just a small fraction of the roughly 200 Treasury securities outstanding, they account for 71 percent of activity in the interdealer market * * *''); and The Transition to Electronic Communications Networks in the Secondary Treasury Market, by Bruce Mizrach and Christopher J. Neely, Federal Reserve Bank of St. Louis Review, November/December 2006 (''There is much more secondary volume in on-the-run securities than off-the-run securities, with the former representing 70 percent of all trading volume…'').

[14] *See, for example,* Chicago Mercantile Exchange Group (''CME'') offering futures as well as options on Treasury securities, at *http://www.cmegroup.com/trading/interest-rates/on-the-run-us-treasury-futures.html.* CME Treasury futures volumes in the year 2011 include: 315,903,050 contracts on the 10 year Treasury note; and 92,065,406 contracts on the 30 year Treasury bond. The Exchange notes that while proposed Treasury options would have a face value of $10,000 per contract (proposed Rule 1008D), CME futures products have a face value of $100,000.

[15] *See* Securities Exchange Act Release No. 66616 (May 16, 2012), 77 FR 16879 (May 22, 2012) (SR–Phlx–2012–11) (order approving listing FOREX options on Phlx). In the approval order, the Commission noted the liquidity of the forex markets underlying the PHLX FOREX options proposed by the Exchange. The Exchange notes that the appropriate dates for the citation are March 16, 2012 and March 22, 2012, respectively. *See* email from Jurij Trypupenko, Phlx, to Michael Gaw, Assistant Director, and Adam Moore, Attorney Advisor, Division of Trading and Markets, Commission, dated August 15, 2012.

[16] *See http://www.sifma.org/research/statistics.aspx* and *http://www.bis.org/publ/rpfx10.htm.*

traders would be able to use options on Treasury securities as short and long-term investment vehicles; as viable alternatives to potentially more risky derivative vehicles; and as a hedge against equity, option, or other security positions or against the risks associated with inverse interest rate movements while retaining the opportunity to profit from favorable movements.

The Exchange contends that trading Treasury securities options on the Exchange, as proposed, offers several distinct benefits.[17] First, options on Treasury securities would be traded in a highly regulated and transparent exchange environment. Second, as a result of the standardization of Treasury securities option contracts in conjunction with quoting and market making requirements, such option contracts should develop more liquid and deeper markets. Third, counterparty credit risk would be mitigated because the contracts would be issued and guaranteed by the OCC. And fourth, the quotation and last-sale data provided by the Exchange to the options processor, Options Price Reporting Authority (''OPRA''), and its members would lead to more transparent markets. The Exchange believes that expanding the universe of listed products available to market participants interested in Treasury securities options by listing such options on the Exchange could significantly increase competition with other exchanges that have the capability to list and trade derivatives on Treasury securities[18] as well as with the OTC market.[19]

Exchange Rules Are Applicable

The Exchange establishes the controlling principle that its existing rules and procedures are applicable to options on Treasury securities and the proposed rules would supplement existing Exchange rules. Proposed Rule 1000D states that unless otherwise specified, the rules in the 1000D Series are applicable only to options on Treasury securities. The rule states further that except to the extent that specific rules in the 1000D Series govern, or unless the context otherwise requires, the provisions of the Option Rules applicable to equity options[20] and of the By-Laws[21] and all other Rules and Policies of the Board of Directors[22] (together referred to as ''current Exchange rules'') are applicable to the trading on the Exchange of options on Treasury securities. The Exchange underscores the general controlling principle that current Exchange rules are applicable by referring to current option rules in certain proposed Treasury securities options rules.[23]

Treasury securities options will generally trade on the Exchange's electronic options platform, Phlx XL[24] and settle like equity options on the Exchange. As noted, therefore, Exchange rules applicable to equity options trading will be applicable to Treasury securities options unless there is a specific rule in the 1000D Series to the contrary or a proposed rule supplements an existing rule.

Treasury securities options will be physically settled, European-style options that may be exercised only on the day that they expire.[25] Trading in Treasury securities options ordinarily will cease on the business day (usually a Friday) preceding the expiration date. Trading hours will correspond to the hours during which equity options are normally traded on the Exchange, which currently are 9:30 a.m. to 4:00 p.m. ET.[26] The expiration date will be the Saturday immediately following the third Friday of the expiration month.[27]

Definitions

Definitions applicable to Treasury securities and options on them are found in proposed Rule 1001D. Regarding products underlying options to be traded on the Exchange subsection (a)(1) states that ''Treasury securities'' represent a bond or note, or other evidence of indebtedness that is a direct obligation of, or an obligation guaranteed as to principal or interest by, the United States or a corporation in which the United States has a direct or indirect interest.[28] Next, the terms ''bond'' and ''note'' are defined. Subsection (a)(2) of proposed Rule 1001D states that Treasury notes are interest-bearing debt instruments issued by the U.S. Treasury with a term to maturity of at least two years but no more than ten years at the time of original issuance. Subsection (a)(3) states that Treasury bonds are interest-bearing debt instruments issued by the U.S. Treasury with a term to maturity of more than ten years at the time of original issuance.

The Exchange establishes two exercise price definitions in proposed Rule 1001D: exercise price and aggregate exercise price.[29] The Exchange also establishes the concept of a covered short call and put position in Treasury securities options.[30]

[17] The Exchange currently allows the trading of certain options that may reference Treasury Securities. Commentary .09(a)(iv) to Rule 1009 states that securities deemed appropriate for options trading currently include shares or other securities including Fixed Income Index-Linked Securities (''Fixed Income ILS''). Fixed Income ILS are described as securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (''Fixed Income Reference Asset'').

[18] For example, as noted CME lists futures and options on futures on Treasury securities (and other debt instruments). CBOE lists options on exchange traded funds and other vehicles that are invested in Treasury securities.

[19] Exchange listed options are viewed as a viable, liquid alternative to OTC options. This is, as discussed, because exchange listed options do not possess the negative characteristics often associated with non-exchange listed (OTC) options, such as lack of transparency; counterparty risk; and insufficient regulation, clearing arrangements, collateral requirements, and trade processing. The Exchange/OTC market distinction and the safeguards of central clearing and SRO regulation have become particularly evident and significant in the recent economic downturn.

[20] Option Rules 1000 *et seq.*

[21] By-Laws Articles I to VII.

[22] Rules of the Exchange Rule 1 *et seq.* and Options Floor Procedure Advices.

[23] For example, proposed Rule 1004D refers to current Rules 1001 regarding position limits, 1003 regarding reporting of options positions, and 1004 regarding liquidation of positions. Proposed Rules 1011D and 1012D refer to current Rule 1047 regarding trading rotations, halts and suspensions. Proposed Rule 1014D refers to current Rule 1014 regarding obligations and restrictions applicable to specialists and Registered Options Traders (''ROTs''; specialists and ROTs are defined in Rules 1020 and 1014(b)(i), respectively), and Rule 1080 regarding electronic trading via Phlx XL and XL II. Proposed Rule 1015D refers to current Rule 1059 regarding accommodation trading. Proposed Rule 1019D refers to current Rule 1014 regarding obligations and restrictions applicable to specialists and bid/ask differentials. Proposed Rule 1020D refers to current Rule 1043 regarding exercise assignment notices. Proposed Rule 1022D refers to Rule 721 regarding margin.

[24] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (order approving Phlx XL II).

[25] Proposed Rule 1008D(c).

[26] Proposed Rule 1010D. For trading hours on the Exchange, *see* Rule 101.

[27] Specifications for options on Treasury securities may be found at www.nasdaqtrader.com.

[28] *See* supra note 3.

[29] Subsections (a)(5) and (a)(6) of Rule 1001D, respectively, state: ''Exercise price'' in respect of a specific cusip option means the specified price at which the underlying Treasury security may be purchased or sold upon the exercise of the option contract. ''Aggregate exercise price'' in respect of a specific cusip option means the exercise price of an option contract multiplied by the principal amount of the underlying Treasury security covered by the option.

[30] Subsection (a)(7) of rule 1001D states: The term ''covered'' in respect of a short position in a Treasury security call option contract means that the writer holds in the same account on a principal for principal basis: (1) A long position in underlying Treasury securities that qualify for delivery upon exercise; (2) a long Treasury securities call option position for the same underlying security as the short call position where the expiration date of the long call position is the

Designation and Commencement of Trading

Treasury securities options will use a convention for describing (designating) options that is uniquely adapted to the nature of such options. Specifically, proposed Rule 1005D states that Treasury options purchased and sold on the Exchange will be designated by reference to the issuer of the underlying Treasury security, principal amount, expiration month (and year for the longest term option series), exercise price, type (put or call), stated rate of interest, and stated date of maturity or nominal term to maturity. For example, a specific cusip call option expiring in March and having an exercise price of 96 of the $10,000 principal amount of a 3 ¾% Treasury bond that matures on August 15, 2041, would be designated as a Treasury 3 ¾%—8/15/41 March 96 call.

Regarding specific cusip Treasury security options, subsection (a) to proposed Rule 1009D states that at any time after an auction sale of an underlying Treasury security, if the Exchange decides to initially open options for trading the Exchange shall open a minimum of one expiration month and series for each class of options.[31] These options are opened only on settled, on-the- run Treasury securities pursuant to the ''options listing timeframe'' concept established in Rule 1006D.[32] The Exchange notes that while the ''options listing timeframe'' concept is specific to Treasury securities options, the minimum one expiration month and one series requirement is wholly consistent with a similar requirement for other options traded on the Exchange.[33]

Additional series may also be opened when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or to reflect substantial changes in the prices of underlying Treasury securities. These series are opened pursuant to the ''additional series'' concept established in Rule 1006D.[34] The Exchange will give notice that it is opening any such additional options.[35]

Terms and Criteria for Listing and Trading

The Exchange proposes rules setting forth the initial and continued (maintenance) listing standards for Treasury securities options.

Specifically, subsection (a) of proposed Rule 1006D states that Treasury securities may be initially approved by the Exchange as underlying securities for Exchange transactions in specific cusip options, subject to requirements as to size of original issuance, aggregate principal amount outstanding, and years to maturity.

Additionally, the following factors must be met:

(1) The original public sale of an underlying Treasury security shall be at least $1 billion principal amount.

(2) In order to limit underlying Treasury securities that are approved for specific cusip options listings to the most recently issued and actively traded Treasury securities, Exchange approval of a Treasury security underlying Treasury options will only extend to the settled on-the-run Treasury security (''options listing timeframe''). However, the Exchange shall not approve a subsequent settled on-the-run Treasury security until after the expiration of all the options that are listed pursuant to the preceding options listing timeframe.

Moreover, any additional series of specific cusip Treasury options overlying the settled, on-the-run Treasury security may be opened only within the options listing timeframe.[36]

Proposed Rule 1006D establishes several principals. First, the proposed ''options listing timeframe'' of a Treasury security on which Treasury options may overlie always coincides with the on-the-run period for the Treasury security, once such option is settled.[37] This establishes that a Treasury security is eligible for listing of options only during its most liquid on-the run period. Second, options on a newly settled (subsequent) on-the-run Treasury security can only be listed after all the options that are listed pursuant to the preceding options listing timeframe expire. This minimizes or negates overlap and proliferation of Treasury options. As discussed, an on-the run Treasury security (e.g. 30 year bond) in the options listing timeframe becomes off-the-run when there is a subsequent auction for the Treasury security and as a result the newly settled security becomes on-the-run. The Exchange will not list options on the subsequent on-the-run Treasury security until all options listed within the options listing timeframe on the immediately preceding on-the-run Treasury security (which has become off-the-run) expire. Third, after options are initially listed in an options listing timeframe, any additional series of options may only be opened within the same options listing timeframe. Thus, new series of options may not be opened outside an options listing timeframe.

As an example, assume that for the 3.00% 30-year Treasury bond that matures on May 15, 2042, the on-the-run period would be the three calendar months of June, July, and August.[38] The auction for the 30-year bond would take place in June and the bond would settle within a week of the auction. This settled on-the-run period represents the ''options listing timeframe'' for the 30-year Treasury bond that the Exchange

same as or subsequent to the expiration date of the short call position and the exercise price(s) of the long call position is equal to or less than the exercise price of the short call position; or (3) a custodial or Treasury securities escrow receipt pursuant to Rule 1022D.

The term ''covered'' in respect of a short position in a Treasury security put option contract means that the writer holds in the same account on a principal for principal basis: (1) a long Treasury security put option position for the same underlying security as the short put position where the expiration date of the long put position is the same as or subsequent to the expiration date of the short put position and the exercise price(s) of the long put position is equal to or greater than the exercise price of the short put position or (2) a Treasury security put guarantee letter pursuant to Rule 1022D.

[31] A single Treasury security option covers $10,000 principal amount of the underlying security. Proposed Rule 1008D.

[32] Proposed Rule 1006(a)(2) establishes that the ''options listing timeframe'' is when an underlying Treasury security is settled and on-the-run. In Exhibit 1 of the Form 19b-4 provided by the Exchange, the Exchange used the term ''opening time frame'' in several places in this discussion. Per the request of the Exchange, the term ''opening time frame'' has been replaced with ''options listing frame'' in this Notice. *See* email from Jurij Trypupenko, Phlx, to Michael Gaw, Assistant Director, and Adam Moore, Attorney Advisor, Division of Trading and Markets, Commission, dated August 15, 2012.

[33] *See* Rules 1012 (stock and ETF options) and 1101A (narrow and broad-based index options).

[34] Proposed Rule 1006D(a)(2) establishes that additional series of specific cusip Treasury options may be opened only within the ''options listing timeframe.'' While the ''options listing timeframe'' concept is specific to Treasury securities options, the series add procedure is otherwise similar to the process for adding other option series on the Exchange. *See* Rule 1012 in respect of equity and ETF options. As discussed, the exercise price of an option must be reasonably close to the price at which the underlying security is traded in the primary market at the time the series of options is first opened for trading. Proposed Rule 1008D.

[35] The Exchange generally provides notice via OTA or the Exchange Web site.

[36] Provided that, in respect of this second requirement, such approval may be extended in the event of the reopening of the underlying security by the Treasury, or in the event of issues where a reasonably active secondary market exists. Further, even prior to the end of such options listing timeframe and additional series, the Board (or a designee of the Board) shall withdraw approval of an underlying Treasury security at any time if it determines on the basis of information made publicly available by the Treasury that the security has a public issuance of less than $750 million, excluding stripped securities. Proposed Rule 1006D(a)(2).

[37] Currently, Treasury securities are settled within approximately a week after an auction occurs.

[38] This is a typical on-the-run period for a Treasury security.

can then list options on.[39] Thus, overlying the settled 30-year Treasury bond in the options listing timeframe, the Exchange could determine to initially list the following options: the Treasury 3.00%—5/15/42 June 99 call, 100 call, and 101 call, as well as three put strikes. And, within the options listing timeframe the Exchange could determine to list additional series as a 102 call and a 103 call. These options are within the limitations set forth in proposed Rule 1006D, which allows the Exchange to list Treasury options only on settled on-the-run Treasury securities, that is, within the options listing timeframe; and allows the Exchange to open additional series of options as long as they are within the options listing timeframe.

Proposed Rule 1007D states in subsection (a) that the Board (or a designee of the Board) may determine, for any reason, to withdraw approval of any Treasury securities that were initially approved for options trading pursuant to Rule 1006D as underlying securities.[40] Subsection (b) states that after any announcement by the Exchange of such withdrawal of approval, each member organization shall, if requested by a customer to effect an option transaction in such Treasury securities, inform such customer of the withdrawal of approval prior to affecting any transactions in such securities.

Minimum Price Variation and Bids and Offers

Proposed Rule 1013D discusses minimum increment and the unique meaning of bids and offers for options on Treasury securities. Specifically, subsection (a) provides that Treasury securities options shall have a minimum increment of $.01. Subsection (b) similarly provides that bids and offers for Treasury securities options shall be expressed in $.01 increments. The Exchange believes that the proposed $.01 increments are uniform and particularly appropriate for Treasury securities options to allow traders to make the most effective use of the product for trading and hedging purposes. The Exchange believe further that the proposed $.01 increments will not cause any capacity problems.

Penny increments have been used very effectively for more than five years on the Exchange as well as on other options markets. First, the Commission has approved the use of penny increments pursuant to the Penny Pilot, pursuant to which some of the highest-volume options trade in penny increments for series of options less than $3.00.[41] Second, the Commission has approved the use of penny increments for certain categories of products on the Exchange such as, for example, foreign currency options (FCOs, also known as World currency Options or WCOs).[42] Third, the Commission has approved the use of penny increments for specific option products on the exchange such as Alpha Index Options.[43] Fourth, the Commission has approved penny increments for various option products traded on other exchanges.[44] As such, the Exchange believes that penny increments are proper for Treasury securities options and represents that it has the necessary system capacity to support any additional Treasury securities option series that are listed pursuant to this proposal.

It is clear that inadequately narrow Treasury securities option intervals negatively impact trading and hedging opportunities.

As an example, if the increments were set at another interval level such as $0.50 instead of the proposed $0.01, and an investor wanted to spend no more than $375 to buy a down-side hedge with a put option on a Treasury bond currently trading 102.00, the investor would have the following strikes available from which to chose: an at-the-money (''ATM'') 102 put and an out-of-the-money (''OTM'') 101 put. If the bid/ask quote for the ATM 102 put was $350/$400, then the investor may elect not to pay $400 and may subsequently choose the lower OTM 101 put. Even if the resulting 101 put had a bid/ask of $200/$250, thereby allowing the investor to make a purchase for less than $375, the investor would have a different risk/reward scenario because the lower put would not represent an ATM hedge. Accordingly, the investor would have to carry the Treasury bond position with risk of market movement down to the 101 strike before the put becomes an ATM put. If, on the other hand, the proposed $0.01 intervals were effective, and the same investor had a choice of the same strikes from which to choose (an ATM 102 put and an OTM 101 put), at $0.01 intervals the premium cost for a hedge using the ATM 102 put may be about $359 to $360. This would garner the investor as much as a $40 or 10% savings in the cost to put on the desired hedge. The proposed interval range would clearly be very advantageous to investors; and would be costly if not available.

And as yet another example, if an investor were interested in purchasing a complex option spread, narrow option intervals would offer additional cost savings and choice. Using the noted 102 and 101 put example, an investor may choose to purchase (go long) a put spread as a hedge; this would be a complex order where the investor would buy the higher strike and simultaneously sell the lower strike for a debit. If the strike price increments were set at $0.50 and an investor wanted to spend no more than $150 to buy a down-side hedge via a long put spread, and the bid/ask of the 102 put was $350/$400 and the 101 put was $200/$250, the premium cost to the investor would be $200 (simultaneous purchase of the 102 put for $400 and

[39] Proposed Rule 1006D(a)(2).

[40] As with other options products (e.g. equity options, index options), Treasury security options that are no longer approved but have open interest would remain open for closing transactions only so that the open interest can trade out or expire.

[41] These include the highest-volume options overlying the PowerShares QQQ Trust (QQQQ)®, the SPDR S&P 500 Exchange Traded Funds (SPY), and the iShares Russell 2000 Index Funds (IWM) which, unlike other Penny Pilot options, trade at penny increments regardless of the price (the Penny Pilot establishes $.05 increments where the price is $3.00 or higher). *See* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007)(SR-Phlx-2006–74)(notice of filing and approval order establishing Penny Pilot); and Rule 1034. All other options exchanges have similar penny pilot programs.

The Exchange notes that the Penny Pilot has structural limitations that make it wholly inappropriate for Treasury securities options. The Penny Pilot is, for example: (a) Available only for a limited number of equity, index, and ETF options, and all of the available slots are already used; (b) designed to be used by other exchanges that have similar pilots to multiply list and trade options, but as noted all other penny pilot markets do not have rules that would allow them to list Treasury securities options; and (c) is severely limited in terms of price below $3.00.

[42] *See* Securities Exchange Act Release No. 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40) (order approving listing and trading of FCOs or WCOs at penny increments); and Rule 1034.

[43] *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011)(SR–Phlx–2010–176) (order approving listing and trading Alpha Index Options); and Rule 1034.

[44] *See* Exchange Act Release Nos. 64991 (July 29, 2011), 76 FR 47280 (August 4, 2011) (SR–CBOE–2011–039) (order approving listing and trading single stock dividend options in penny increments); 63352 (November 19, 2010), 75 FR 73155 (November 29, 2011)(SR–CBOE–2011–046) (order approving amendments regarding credit default options, including penny increments); 31169 (May 22, 2008), 73 FR 31169 (May 30, 2008) (SR–CBOE–2006–105) (order approving listing and trading binary options on broad-based securities in penny increments); and 58486 (September 8, 2008), 73 FR 53298 (September 15, 2008) (SR–ISE–2008–36) (notice and filing and immediate effectiveness proposing to permit ISE members to enter non-displayed electronic orders and quotes in penny increments, citing to SR–CBOE–2007–39 and SRNASDAQ–2007–004 and SR–NASDAQ–2007–080). *See also* NYSE Arca Equities Rule 7.6, Commentary .03, which indicates that the minimum price variation for quoting and entry of orders in equity securities traded on Arca is $.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

sale of the 101 put for $200). However, if the proposed $0.01 intervals were effective, and an investor wanted to spend no more than $150 to buy a down-side hedge via a long put spread, and the bid/ask of the 102 put was $359/$360 and of the 101 put was $220/$221, the premium cost would be $140 (simultaneous purchase of the 102 put for $360 and sale of the 101 put for $220). This would garner the investor as much as a $60 or 30% savings in the cost to put on the desired hedge. The proposed interval range would clearly be very advantageous to investors; and would be costly if not available.[45]

Proposed Rule 1014D sets forth that current Rule 1014 is applicable to Treasury securities options. Rule 1014 sets for obligations and restrictions applicable to specialists and ROTs and discusses, among other things, market making obligations, quoting obligations and parameters, and priority. Proposed Rule 1014D also sets forth that Rule 1080 is applicable to Treasury securities options. Rule 1080 discusses the operation of Phlx XL and XL II, which are the Exchange's electronic platform in respect of orders, execution and trades. The Exchange specifically notes Rules 1014 and 1080 in proposed Rule 1014D because of the applicability to Treasury securities options trading of fundament trading-related matters in Rules 1014 and 1080 such as, for example, market making and quoting obligations, priority, and electronic trading.

The Exchange likewise proposes Rule 1019D regarding maximum bids and offers that may be maintained by specialists and ROTs in options on Treasury securities. This rule states that without limiting the general obligation to deal for his account as stated in Rule 1014,[46] a specialist or ROT holding an appointment in Treasury securities options is expected, in the course of maintaining a fair and orderly market, to bid and/or offer so as to create differences of:

(1) No more than $0.25 between the bid and offer for each option contract for which the bid is less than $1;

(2) no more than $0.50 where the bid is $1 or more but less than $5;

(3) no more than $0.80 where the bid is $5 or more but less than $10; and

(4) no more than $1 where the bid is $10 or more.[47]

Subsection (b) of Rule 1019D states that for all longer term series the maximum bid/ask differentials are double those listed in subsection (a). This subsection states further that the differentials apply only to the two nearest term series of each class of Treasury security options. The Exchange notes that the proposed increments and maximum bid/ask variations are designed to allow the Exchange flexibility to list options with strike increments at appropriate levels, while diminishing any potential adverse effect on the Exchange's quote capacity thresholds. The Exchange believes that the operational capacity used to accommodate the trading of Treasury securities options on the Exchange will have a negligible effect on the total capacity used by the Exchange to trade its products on a daily basis.

Expiration and Exercise

Proposed Rule 1008D discusses expiration and exercise price in respect of Treasury securities options. Subsection (a) states that a single Treasury security option covers $10,000 principal amount of the underlying security. The expiration month and exercise price of Treasury security options of each series shall be determined by the Exchange at the time each series of options is first opened for trading.[48]

Subsection (b) provides that Treasury security options opened for trading on the Exchange will expire on a monthly basis, none further out than the options listing timeframe and additional series as defined in Rule 1006D.[49] Subsection (c) provides that Treasury security options may be exercised only on the day that they expire. The subsection provides further that the exercise price of each series of Treasury security options shall be fixed at a price denominated in $0.50. In the case of a specific cusip Treasury security option, the exercise price will be reasonably close to, and no more than 20% away from, the price at which the underlying security is traded in the primary market at the time the series of options is first opened for trading.[50] The proposed rule also states that the exercise price of additional series will be fixed at a multiple of $0.50.[51]

Proposed Rule 1020D discusses exercise assignment notices in the case of Treasury securities options. Subsection (a) states that the method of allocation of exercise notices established pursuant to Rule 1043 may provide that an exercise notice of block size[52] shall be allocated to a customer or customers having an open short position of block size; and that an exercise notice of less than block size shall not be allocated, to the extent feasible, to a customer having a short position of block size. In the case of call option contracts, subsection (b) states that a member organization shall allocate an exercise notice to a customer who has made a specific deposit of the underlying security if it is directed to do so by the OCC.

Settlement and Delivery/Payment

Options on Treasury securities will be physically settled and, being European style options, may be exercised only on the expiration date. The settlement process for Treasury securities options will be the same as the settlement process for equity options under current Exchange rules (e.g. Rule 1044).

[45] The Exchange notes that in that Treasury security option positions could be quite large because the underlying instruments would be in $10,000 denominations, the percentage savings discussed in the examples could be very significant.

[46] Rule 1014 is, similarly to the relationship between current and proposed rules in the filing, supplemented by proposed Rule 1019D. While bid/ask (offer) differentials are set forth for other (non-Treasury securities) options in Rule 1014, specific bid/ask (offer) differentials are set forth for Treasury securities options in proposed Rule 1014D. This is in line with the principle that while current options trading rules (e.g. 1014 and 1080) are applicable to Treasury securities options, certain rules specifically tailored to Treasury securities options trading are promulgated in this proposal.

[47] This is similar to the structure for maximum bids and offers for equity, index, and FCO (WCO) options on the Exchange. See Rule 1014(c).

[48] When opening a Treasury security option for trading, the Exchange will open at least one series and one month. Proposed Rule 1009D(a). The Exchange may open Treasury options within the ''opening time frame,'' *see* proposed Rule 1006D(a)(2), which coincides with the on-the-run period for the underlying Treasury security. The Exchange has the ability to open and add Treasury options in one or all of the months in the opening timeframe. *See also* supra notes 36 and 37 and related text.

[49] *But cf.* CBOE Rule 21.8(b), which allows the CBOE board (or a designee of the board) to provide alternate expiration cycles after notifying traders of Treasury security options.

[50] The Exchange believes that in light of the potential volatility in bond prices, the proposed 20% exercise price band around the underlying is quite reasonable. *See,* e.g., Commentary .06 to Rule 1012 establishing a 20% volatility band (20% above and 20% below) for currency options (FCOs or WCOs).

[51] The Exchange notes that relatively small portions of a dollar, such as for example a quarter or less, may have a significant effect on exercise prices of positions held by traders and public customers because of the large size of the underlying Treasury securities options. The Exchange notes further that futures on similar Government securities, with which the proposed Treasury securities options would compete, enjoy intervals that are as small as one sixty-fourth of a point (dollar).

To minimize the proliferation of strikes, however, the Exchange is proposing somewhat larger $0.50 intervals for Treasury securities option exercise strike prices.

[52] For the purposes of this Rule, an exercise notice or a short position in a series of options where the total principal amount is $1 million or more and where the underlying security is a Treasury security shall be deemed to be of ''block size.'' Subsection (c) of Rule 1020D.

Subsection (a) to proposed Rule 1021D states, in respect of delivery and payment of options on Treasury securities, that payment of the aggregate exercise price in the case of specific cusip options must be accompanied by payment of accrued interest on the underlying Treasury security. The interest will be from (but not including) the last interest payment date to (and including) the exercise settlement date as specified in the rules of the OCC.

Position Limits

In determining position limit compliance, proposed Rule 1002D establishes initial and maintenance position limits unique to options on Treasury securities.

Regarding initial position limits, subsection (a) of proposed Rule 1002D provides that the options shall be subject to a contract limitation (whether long or short) of the put type and the call type on the same side of the market covering a value no greater than 7.5% of the value of the initial or reopened public issuance, rounded to the next lower $100 million interval. For purposes of this position limit, there will be a combining of long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or such other lower amount of options as fixed from time to time by the Exchange as the position limit for one or more classes or series of options. Subsection (a)(1) provides that in no event shall the position limit exceed a position on either side of the market covering a value in excess of $750,000,000 of the underlying securities. Subsection (a)(2) requires that the Exchange provide reasonable notice of each new position limit fixed by the Exchange, by notifying members thereof via OTA.

To calculate the proposed $750,000,000 position limit proposed in Rule 1002D, the Exchange is using Position Accountability Levels (''Accountability Levels'' or ''limits'') for Treasury futures and options on such futures on CBOT as the starting basis. Unlike the current situation on options markets, where there is no active trading of Treasury derivatives, CBOT has the most active markets in the U.S. for trading listed futures on Treasuries and options on such futures. The current CBOT Accountability levels, which effectively serve as position limits on CBOT Treasury derivatives,[53] are the equivalent of dollar position limits with a notional value of $2,500,000,000 for options on futures and $1,000,000,000 for futures on Treasury bonds traded on CBOT; and $2,000,000,000 for options on futures and $750,000,000 for futures on Treasury notes traded on CBOT.[54] The Exchange is using these notional position limit values as a starting point to which it applies a conservative methodology to arrive at a proposed $750,000,000 proposed position limit in Rule 1002D for options on Treasury securities traded on the Exchange. First, the Exchange is using the CBOT futures Accountability limit for Treasury bonds (notional value of $1,000,000,000) to establish the proposed position limit for options on Treasury securities. This is because CBOT futures on Treasuries, rather than CBOT options on such futures, are arguably more similar to Exchange options on Treasury securities.[55] Second, the Exchange is then applying a 25% haircut to the $1,000,000,000 notional value for CBOT Treasury futures. This is because Exchange options on Treasury securities would settle into a single cusip Treasury security while CBOT Treasury futures and options settle into the cheapest to deliver Treasury security. And third, when compared to CBOT Treasury options on notes the proposed $750,000,000 position limit for Exchange options on Treasury securities is more that 60% lower that the position limit for CBOT Treasury options on futures (notional value of $2,000,000,000).[56]

The Exchange believes that its very conservative proposed nominal dollar position limit, in conjunction with the proposed equally conservative 7.5% of the value of the initial or reopened public issuance,[57] will minimize (negate) potential manipulation and fraudulent activity in Treasury options.[58]

Regarding maintenance of position limits for Treasury securities options, subsection (b) of proposed Rule 1002D provides that in the event that any of the underlying Treasury securities are reported as ''separate trading of registered interest and principal of securities'' (''strips'') in the Monthly Statement of the Public Debt of the United States Government, or such other report or compilation as may be selected from time to time by the Exchange, such stripping shall be taken into account in determining whether the position limit as initially established under paragraph (a) (''the established position limit'') can be maintained (the remaining non-stripped underlying securities are hereinafter referred to as ''the non-stripped securities'').

Subsection (b)(1) states that the established position limit may remain so long as the position limit covers a principal amount of underlying securities not in excess of 7.5% of the non-stripped securities. However, in the event that the established position limit covers a principal amount of securities in excess of 7.5% of the non-stripped securities, the Exchange shall reestablish the position limit to cover a principal amount of underlying securities not in excess of 7.5% of the non-stripped securities.[59] Subsection (2) provides that except as otherwise exempted under Exchange rules, persons whose positions exceed revised position limits may only engage in liquidating transactions until their positions are lower than the revised position limits.

By virtue of proposed Rule 1003D, exercise limits for options on Treasury securities are equivalent to position limits on these instruments. This is similar to the relationship of position

[53] *See http://www.cmegroup.com/rulebook/files/CBOTChapter5_InterpretationClean.pdf.*

[54] The dollar equivalent position limit value for options on Treasury bonds traded on CBOT, as an example, is calculated as follows: 25,000 share CBOT Accountability Level × CBOT Treasury option face value of $100,000 × Phlx option on Treasury security face value of $10,000 = $2,500,000,000.

[55] CBOE Treasury futures will, like Exchange options on Treasury securities, settle into the underlying Treasury notes or bonds; CBOT options on Treasury futures, on the other hand, will settle into the underlying derivative instruments (futures).

[56] The proposed $750,000,000 position limit for Exchange options on Treasury securities approximates the notional position limit for CBOT Treasury futures on notes.

[57] Upon examining U.S. Treasury record setting auction data at *http://www.treasurydirect.gov/instit/annceresult/auctdata/auctdata_statdata.htm,* which has ''Highest Offering Size'' for Treasury bonds and notes, the Exchange believes that the proposed 7.5% limit is quite conservative. For example, if the 7.5% maximum were applied to the ''Highest Offering Size'' for the 30 Year Treasury Bonds, which was $16,000,000,000 on November 12, 2009 (and was $44,000,000,000 for 2-year Treasury notes), the maximum value would be $1,200,000,000. By establishing the proposed, substantially lower position limit of 7.5% and $750,000,000, the Exchange has put into place a mechanism that guards against achieving higher automatic positions limits in all Treasury bonds and notes, including the higher offering size 2-year Treasury notes.

[58] The Exchange also notes that its proposed position limits are significantly smaller that the position limits that were approved by the Commission decades ago for trading Treasury options on CBOE. *See* CBOE Rule 21.3(a), which states, in relevant part that: * * * Options on a Treasury security shall be subject to a contract limitation (whether long or short) of the put type and the call type on the same side of the market covering a value no greater than 10% of the value of the initial or reopened public issuance, rounded to the next lower $100 million interval * * * In no event shall the position limit exceed a position on either side of the market covering a value in excess of $1,200,000,000 of the underlying securities.

[59] Such revisions will become effective the Monday following the provision of notice thereof via OTA.

and exercise limits for equity and other options pursuant to current Exchange rules.[60]

Moreover, proposed Rule 1004D states that for purposes of Rules 1003 and 1004,[61] references to Rule 1001 in connection with position limits shall be deemed, in the case of Treasury securities options, to be to Rule 1002D. The proposed rule states further that the reference in Rule 1003(a) to reports required of positions of 200 or more options shall, in the case of Treasury securities options, be revised to positions of options covering $2 million or more principal amount of underlying Treasury securities, for example, the 3.125% bonds due in the year 2042.

Margin

The current procedure for establishing margin on the Exchange is in Rule 721. The rule states that member organizations must elect whether they will follow CBOE or New York Stock Exchange (''NYSE'') margin rules, notify the Exchange of the election, and comply with the applicable rules.[62] The Exchange proposes to amend Rule 721(b) to state that upon the filing of such election, a member organization engaged in trading Treasury securities options on the Exchange shall, in respect of such trading, comply with the NYSE initial and maintenance margin rules or CBOE margin rules in Chapter XII (not CBOE Government security options margin rules in Chapter XXI).[63] Chapter XXI is specifically excluded to underscore that Exchange members must use CBOE option margin rules located in Chapter XII (or must use NYSE initial and maintenance margin rules). Proposed Rule 721(b) provides, however, that short Treasury securities options traded on the Exchange shall follow the margin percentage requirements for short equity options in NYSE margin rules or the margin percentage requirements for short equity options in CBOE Chapter XII; and that portfolio margin shall not be applicable to Treasury securities options.[64]

Proposed Rule 1022D states that Exchange member organizations shall comply with initial and maintenance margin requirements per Rule 721. By operation of proposed Rule 1022D, member organizations involved in trading Treasury security options will be bound by CBOE or NYSE options margin rules consistent with member organizations' choices of CBOE or NYSE for other margin purposes.

The Exchange believes that this proposed margin procedure is particularly appropriate for Treasury securities options. First, it ensures consistency in that member organizations must consistently follow the margin rules of either CBOE or NYSE according to their written margin rules election per Rule 721; and in particular must follow the short equity margin percentage requirements of CBOE or NYSE. Second, it is operationally and systemically efficient in that member organizations can immediately apply the relevant margin procedures that they use for options margin (e.g. short equity margin percentages) to the proposed new Treasury securities options; and the Exchange can use established margin surveillance processes, thereby reducing the potential for error from all perspectives. And third, the current option margin rules of CBOE are, without a doubt, more up to date and usable in today's fast-paced hybrid and electronic trading environment than the decades-old CBOE Government securities options margin rules.

When trading short Treasury securities options, member organizations must, per proposed Rule 721, apply NYSE or CBOE short equity margin rules. Thus, in terms of CBOE margin rules, CBOE Rule 12.3 (which contains a 20% short margin requirement) would be applicable to equity options margin as well as to Treasury securities margin. As an example, when applying the 20% short margin requirement to one short at-the-money equity option call contract priced at $3.00 on XYZ stock priced at $100.00, the margin would be $2,300. This amount is calculated by adding 100% of options proceeds received (one call option contract priced at $3.00 equals $300) plus 20% of the underlying security value (the underlying security value of 100 shares of XYZ stock priced at $100.00 equals $10,000). And, when applying the 20% short margin requirement to one short at-the-money Treasury securities option call contract priced at $3.00 on an on-the-run 30 year Treasury bond priced at $100.00, the margin would be $2,300. This amount is calculated by adding 100% of options proceeds received (one call option contract priced at $3.00 equals $300) plus 20% of the underlying security value (the underlying principal value of a single option on-the-run 30 year Treasury bond equals $10,000). The Exchange believes that the short Treasury security option margin methodology proposed reflects a proper, and indeed very safe, margin requirement.[65]

Doing Business With the Public

Proposed rule 1025D sets up guidelines dealing with customer account approval and supervisory qualification. Subsection (a) states that approval of the accounts of customers shall be conducted in accordance with Rule 747[66] and, in the case of institutional options customers (i.e., customers that are not natural persons), a member organization shall seek to obtain the following information:

(1) Evidence of authority for the institution to engage in Treasury securities options transactions (corporate resolutions, trust documents, etc.);

(2) Written designation of individuals within the institution authorized to act for it in connection with Treasury securities options transactions; and

(3) Basic financial information concerning the institution.

Subsection (b) states that as a general matter, supervisory qualifications of a Registered Options Principal may be demonstrated only by successful completion of an examination prescribed by the Exchange (e.g. Series 4) for the purpose of demonstrating an adequate knowledge of Treasury securities options and the underlying Treasury securities.[67] Subsection (c)

[60] *See* Rules 1001 and 1002 (equity, ETF, currency options) and Rules 1001A and 1002A (index options).

[61] Rule 1003 deals with reporting of options positions and Rule 1004 deals with liquidation of options positions.

[62] *See* Rule 721(b). Moreover, the rules states that the election shall be promptly made in writing by a notice filed with the Exchange; and that each member organization shall be bound to comply with the margin rules of CBOE or NYSE, as applicable, as though said rules were part of the Exchange's Margin Rules.

[63] CBOE Chapter XXI, which is not be used for Treasury securities options, contains rules for Government securities options including margin requirements in Rule 21.25.

NYSE initial and maintenance margin requirements are generally in NYSE Rule 431.

[64] For general information regarding portfolio margin, *see http://www.investopedia.com/terms/p/portfolio-margin.asp#axzz21e62XlUP.*

[65] Moreover, the Exchange believes that the relationship of the underlying principal (in terms of Treasury securities options) compared to the equivalent amount of underlying shares (in terms of equity options) is appropriate. For example, 100 shares of XYZ stock priced at $100 equals $10,000, which is the same amount as a single on-the-run Treasury security option covering a $10,000 principal amount of the underlying Treasury security.

[66] Rule 747, which is applicable to all Exchange member organizations, among other things indicates that prior to making any brokerage transaction for the account of a customer, the opening of a customer account must have been properly approved.

[67] In exceptional circumstances and where good cause is shown, however, the Exchange may, upon written request by a member organization, accept as

Continued

states that the conduct of Treasury securities option business at a branch office of a member organization may be supervised by any Registered Options Principal of the member organization. Subsection (d) states that any sales personnel of a member organization who solicit or accept customer orders with regard to options on Treasury securities shall be deemed qualified with regard to such options after such personnel successfully completed an examination prescribed by the Exchange for the purpose of demonstrating adequate knowledge of options and the underlying Treasury securities.

Other Trading-Related Rules

The Exchange proposes additional trading-related rules for Treasury securities options that are similar to certain rules that are applicable to equity and other options. Proposed Rule 1018D states that a limit order book will be available for Treasury securities options. Proposed Rule 1015D states that accommodation trading under the applicable terms and conditions of Rule 1059 will be available in each series of Treasury securities option contracts open for trading on the Exchange. However, bids or offers for opening transactions at a price of $1 per option contract may be executed only with closing transactions that cannot at that time in open outcry be executed with another closing transaction. Proposed Rule 1016D states that all members, member firms, and clearing members shall resolve unmatched trades in Treasury security options from the previous day's trading no later than 9:00 a.m. (Eastern Time) of the following business day. And proposed Rule 1024D permits members to establish and maintain communication links with other members for the purpose of obtaining timely information on price movements in Treasury securities on which options are dealt in on the Exchange.

Proposed Rule 1023D sets forth procedures regarding furnishing of books, records, and other information to the Exchange. Subsection (a) provides that no specialists or ROTs in Treasury securities options shall fail to make available to the Exchange books, records or other information [68] as may be called for under the rules or as may be requested in the course of any investigation, any inspection or other official inquiry by the Exchange. In addition, the provisions governing identification of accounts and reports of orders shall, in the case of specialist or ROTs in Treasury securities options, apply to (i) accounts for Treasury securities deliverable under the terms of the option contracts involved, Treasury securities futures, options on Treasury securities futures and Treasury securities options trading; and (ii) orders entered by the specialist or ROT for the purchase or sale of Treasury securities deliverable under the terms of the options contracts involved, Treasury securities futures, options on Treasury securities futures, options on Treasury securities and opening and closing positions therein. Also, subsection (b) states that any corporate affiliate of a specialist or ROT in Treasury securities options shall maintain and preserve such books, records or other information as may be necessary to comply with this rule.

Proposed Rules 1011D and 1012D state that Rules 1047 and 1092 are applicable to Treasury securities options. Rule 1047 governs trading halts, rotations and suspensions, and Rule 1092 governs obvious errors and catastrophic errors for equity (and other) options traded on the Exchange. Proposed Rule 1012D(a) states that in addition to the factors set forth in Rule 1047, a factor that may be considered by Options Exchange Officials in connection with the institution of trading halts is that current quotations for the underlying Treasury securities are unavailable or have become unreliable; or that there is a need to prevent an unfair and disorderly market.[69]

Proposed Rule 1012D(b) states that Rule 1092 error procedures shall be applicable to Treasury securities options. The Exchange proposes to amend Rule 1092(a) to state, for purposes of conformity, that Treasury security options will have the same obvious error thresholds as equity and index options.[70]

FOR TREASURY SECURITIES OPTIONS

Theoretical price	Minimum amount
Below $2	$.25
$2 to $5	.40
Above $5 to $10	.50
Above $10 to $20	.80
Above $20	1.00

The Exchange believes that the proposed obvious error threshold, being similar to equity and index options thresholds, will promote consistency and predictability for traders; and that the thresholds are proper in light of the expected trading Treasury options trading ranges.[71] The Exchange also proposes to amend Rule 1092(c)(iv)(D) to state that, similarly to equity options, treasury security option trades on the Exchange will be nullified when the trade occurred during a trading halt of the underlying Treasury security instituted by the United States Government. Unlike other exchange-traded options products that have a primary market for the underlying security (for example, equity options and index options), there is no similar primary market for underlying Treasury securities that are traded over the counter. As such, a Treasury security options trading halt would be based on a trading halt of the underlying Treasury security instituted by the United States Government.[72]

Surveillance

The Exchange will implement surveillance systems that are being used for equity, ETF, currency, and index options to monitor trading in Treasury securities options. This will include, but not be limited to, monitoring for insider trading, manipulation, front-running, and capping and pegging. The Exchange will also monitor public media for rating downgrades and other relevant actions to ensure that the Exchange's maintenance standards are fulfilled, and will monitor for any material actions that may influence the pricing of Treasury securities and options thereon.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [73] in general, and furthers the objectives of Section 6(b)(5) of the Act [74]

a demonstration of equivalent knowledge other evidence of a Registered Options Principal's supervisory qualifications.

[68] More specifically, such books, records, or information as maintained by or in the possession of such member or any corporate affiliate of such member pertaining to transactions by such member or any such affiliate for its own account in Treasury securities, Treasury securities futures or in Treasury securities options.

[69] For example, where the underlying Treasuries are still trading, there may be a severe anomaly in the Treasury options market caused by, for example, by an extreme price move in the equities market which triggers a circuit breaker and halts equity and other trading for a period of time.

[70] The proposed new language in Rule 1092(a) will add, regarding Treasury securities options, that for purposes of the rule an Obvious Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for a series by an amount equal to at least the amount shown in the table above.

[71] Moreover, the Exchange notes that as with any new product, the Exchange will adjust the Treasury options obvious error rule based on experiential need.

[72] As discussed, a Treasury securities option trading halt may also be instituted to prevent an unfair and disorderly market.

[73] 15 U.S.C. 78f(b).

[74] 15 U.S.C. 78f(b)(5).

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by implementing new rules allowing the Exchange to list options on Treasury debt securities and allow trading thereon.

The Exchange believes that the proposed rules for listing and trading Treasury securities options, including options on Treasury notes and bonds, are reasonable and consistent with the Act. The Exchange believes that its proposal would enhance competition and provide access to an additional trading and investing vehicle so that traders and large, institutional, retail, and public investors could more effectively and closely tailor their investing and hedging decisions.

The Exchange has proposed rules that are specifically tailored for trading Treasury security options. Pursuant to these proposed rules, the underlying Treasury securities may be approved as appropriate for listing options subject to requirements as to size of original issuance, aggregate principal amount outstanding, or years to maturity. The proposed position limits, exercise limits, margin rules, and other rules, in conjunction with the current Exchange rules, are particularly tailored for Treasury securities options, reasonable, and consistent with the Act. In particular, the proposed position and exercise limits reasonably balance the promotion of a free and open market for these securities with minimization of incentives for market manipulation and insider trading; and the proposed margin rules are reasonably designed to deter a member or its customer from assuming an imprudent position in Treasury securities options.

For these and previously-noted reasons, the Exchange believes that the proposal to allow the Exchange to list and permit trading of Treasury securities options would enhance competition and provide access to valuable additional trading and investing vehicles. These would allow traders and investors—including large and institutional investors and retail and public investors—to more effectively tailor their investing and hedging decisions in the current challenging economic climate.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that its proposal is pro-competitive. The proposal will allow a new and innovative options product to be listed and traded on the Exchange. This will give market participants the ability to significantly expand their trading and hedging capabilities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–105. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–105, and should be submitted on or before September 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20714 Filed 8–22–12; 8:45 am]

BILLING CODE 8011–01–P

[75] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2012, subject to the availability of funds. Nine states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the

respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

ADDRESSES OF RELEVANT SBDC STATE DIRECTORS

Mr. Al Salgado, Region Director, Univ. of Texas at San Antonio, 501 West Cesar E. Chavez Blvd., San Antonio, TX 78207, (210) 458–2742.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711, (302) 831–2747.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002, (713) 752–8425.

Mr. Mark Langford, Regional Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 860–5832.

Mr. Craig Bean, State Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973.

Mr. Max Summers, State Director, University of Missouri, 410 South Sixth Street, 200, Engineering North, Columbia, MO 65211, (573) 882–1348.

Ms. Lenae Quillen-Blume, State Director, Vermont Technical College, P.O. Box 188, 1 Main Street, Randolph Center, VT 05061–0188, (802) 728–3026.

Ms. Kristina Oliver, State Director, West Virginia Development Office, 1900 Kanawha Blvd., East, Bldg. 6, Rm. 504, Charleston, WV 25305, (304) 957–2087.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, 416 Ponce de Leon Avenue, Union Plaza, Seventh Floor, San Juan, PR 00918, (787) 763–6811.

Ms. Becky Naugle, State Director, University of Kentucky, One Quality Street, Lexington, KY 40507, (859) 257–7668.

Ms. Rene Sprow, State Director, Univ. of Maryland @ College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20742–1815, (301) 403–8303.

Ms. Leonor Dottin, SBDC Director, University of the Virgin Islands, 8000 Niskey Center, Suite 720, St. Thomas, USVI 00802–5804, (340) 776–3206.

Mr. Jim Heckman, State Director, Iowa State University, 2321 North Loop Drive, Suite 202, Ames, IA 50011, (515) 294–2037.

FOR FURTHER INFORMATION CONTACT: Ann Bradbury, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: August 16, 2012.

Ann Bradbury,

Acting Associate Administrator, Office of Small Business Development Centers.

[FR Doc. 2012–20749 Filed 8–22–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 39 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2013 subject to the availability of funds. Twenty states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

ADDRESSES OF RELEVANT SBDC STATE DIRECTORS

Mr. Sherman Wilkinson, State Director, Salt Lake Community College, 9750 South 300 West, Sandy, UT 84070, (801) 957–5384.

Ms. Michelle Abraham, State Director, University of South Carolina, 1705 College Street, Columbia, SC 29208, (803) 777–3130.

Ms. Diane R. Howerton, Regional Director, University of California, Merced, 550 East Shaw, Suite 100, Fresno, CA 93710, (559) 241–6590.

Ms. Debbie Trujillo, Regional Director, SW Community College District, 880 National City Blvd., Suite 103, National City, CA 91950, (619) 482–6388.

Mr. Casey Jeszenka, SBDC Director, University of Guam, P.O. Box 5014—U.O.G. Station, Mangilao, GU 96923, (671) 735–2590.

Mr. Dan Ripke, State Director, California State University, Chico, Building 35, CSU Chico, Chico, CA 95929, (530) 898–4598.

Ms. Priscilla Lopez, Regional Director, California State University, Fullerton, 800 North State College Blvd., Fullerton, CA 92831 (657) 278–2719.

Mr. Herbert Thweatt, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, (684) 699–4830.

Jerry Cartwright, State Director, University of West Florida, 11000 University Parkway, Bldg. 38, Pensacola, FL 32514, (866) 737–7232.

Mr. Sam Males, State Director, University of Nevada Reno, College of Business Admin., Room 441, Reno, NV 89557–0100, (775) 784–1717.

Mr. Mark DeLisle, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04104, (207) 780–4420.

Mr. Jesse Torres, Regional Director, Long Beach Community College, 4901 E Carson Street, MC 05, Long Beach, CA 90808, (562) 938–5020.

Ms. Kristin Johnson, Regional Director, Humboldt State University, Office of Economic & Community Dev., 1 Harpst Street, House 71, Room 110, Arcata, CA 95521, (707) 826–3920.

FOR FURTHER INFORMATION CONTACT: Ann Bradbury, Acting Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with the SBA. SBDCs operate on the basis of a state plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: August 16, 2012.

Ann Bradbury,

Acting Associate Administrator, Office of Small Business Development Centers.

[FR Doc. 2012–20760 Filed 8–22–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13213 and #13214]

Georgia Disaster #GA–00046

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 08/14/2012

Incident: Severe storms and flooding.

Incident Period: 08/07/2012.

Effective Date: 08/14/2012.

Physical Loan Application Deadline Date: 10/15/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Tift.

Contiguous Counties: Georgia:

Berrien, Colquitt, Cook, Irwin, Turner, Worth.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.375
Homeowners without Credit Available Elsewhere	1.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13213 6 and for economic injury is 13214 0.

The State which received an EIDL Declaration # is Georgia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 14, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–20753 Filed 8–22–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13168 and #13169]

Virginia Disaster No. VA–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of VIRGINIA (FEMA–4072–DR), dated 07/27/2012.

Incident: Severe Storms and Straight-line Winds.

Incident Period: 06/29/2012 through 07/01/2012.

Effective Date: 08/15/2012.

Physical Loan Application Deadline Date: 09/25/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of VIRGINIA, dated 07/27/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties Franklin, Montgomery, Smyth, Stafford, Buena Vista City, Falls Church City, Harrisonburg City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–20751 Filed 8–22–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13215 and #13216]

Tennessee Disaster #TN–00068

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of TENNESSEE dated. 08/16/2012.

Incident: Severe storms, flooding and heavy rain.

Incident Period: 08/05/2012 through 08/06/2012.

Effective Date: 08/16/2012.

Physical Loan Application Deadline Date: 10/15/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/16/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties Washington.

Contiguous Counties Tennessee:

Carter, Greene, Hawkins, Sullivan, Unicoi.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.375
Homeowners without Credit Available Elsewhere	1.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13215 6 and for economic injury is 13216 0.

The States which received an EIDL Declaration # are Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 16, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–20755 Filed 8–22–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13217 and #13218]

Indiana Disaster #IN–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated. 08/16/2012.

Incident: Severe storms, high winds, large hail.

Incident Period: 07/31/2012.

Effective Date: 08/16/2012.

Physical Loan Application Deadline Date: 10/15/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/16/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gibson.

Contiguous Counties: Indiana:

Knox, Pike, Posey, Vanderburgh, Warrick.

Illinois:

Wabash, White.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.375
Homeowners without Credit Available Elsewhere	1.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13217 B and for economic injury is 13218 0.

The States which received an EIDL Declaration # are Indiana Illinois.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 16, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–20759 Filed 8–22–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13219 and #13220]

Minnesota Disaster #MN–00037

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Minnesota dated 08/16/2012.

Incident: Severe storms and flooding.

Incident Period: 06/14/2012 through 06/21/2012.

Effective Date: 08/16/2012.

Physical Loan Application Deadline Date: 10/15/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/16/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Carlton, Pine, Saint Louis, Fond Du Lac Band of Lake Superior Chippewa.

Contiguous Counties: Minnesota:

Aitkin, Chisago, Isanti, Itasca, Kanabec, Koochiching, Lake.

Wisconsin:

Burnett, Douglas.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13219 6 and for economic injury is 13220 0.

The States which received an EIDL Declaration # are Minnesota; Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 16, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–20757 Filed 8–22–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7987]

60-Day Notice of Proposed Information Collection: Application for Consular Report of Birth Abroad of a Citizen of the United States of America

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 22, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by: selecting ''Notice''

under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search''. If necessary, use the ''Narrow by Agency'' option on the Results page.

• *Email: mailto:Ask-OCS-L-Public-Inquiries@state.gov.*

• *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/L, SA–29, 4th Floor, Washington, DC 20037–3202.

• *Fax:* 202–736–9111.

• *Hand Delivery or Courier:* U.S. Department of State, CA/OCSL 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037–3202.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20037–3202, who may be reached at *mailto: Ask-OCS-L-Public-Inquiries@state.gov.*

SUPPLEMENTARY INFORMATION:

Title of Information Collection: Application for Consular Report of Birth Abroad of a Citizen of the United States of America.

OMB Control Number: 1405–0011.

Type of Request: Revision.

Originating Office: Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).

Form Number: DS–2029.

Respondents: Parents or legal guardians of United States citizen children born overseas.

Estimated Number of Respondents: 68,627.

Estimated Number of Responses: 68,627.

Average Time per Response: 20 minutes.

Total Estimated Burden Time: 22,876 hours.

Frequency: On occasion.

Obligation to Respond: Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The DS–2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, is used by citizens of the United States to report the birth of a child while overseas. The information collected on this form will be used to certify the acquisition of U.S. citizenship at birth of a person born abroad and can be used by that child throughout life.

Methodology: The DS–2029 is currently available to download from the Internet. An application for a Consular Report of Birth is normally made in the consular district in which the birth occurred. The parent respondents will complete the form and present it to a United States Consulate or Embassy, who will examine the documentation and enter the information provided into the Department of State American Citizen Services (ACS) electronic database.

Dated: July 31, 2012.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 2012–20799 Filed 8–22–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7988]

60-Day Notice of Proposed Information Collection: Application Under the Hague Convention on the Civil Aspects of International Child Abduction

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 22, 2012.

ADDRESSES: You may submit comments by any of the following methods:

• *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by: Selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search''. If necessary, use the ''Narrow by Agency'' option on the Results page.

• *Email: mailto:Ask-OCS-L-Public-Inquiries@state.gov.*

• *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/L, SA–29, 4th Floor, Washington, DC 20037–3202.

• *Fax:* 202–736–9111.

• *Hand Delivery or Courier:* U.S. Department of State, CA/OCSL 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037–3202.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20037–3202, who may be reached at *mailto: Ask-OCS-L-Public-Inquiries@state.gov.*

SUPPLEMENTARY INFORMATION:

Title of Information Collection: Application Under the Hague Convention on the Civil. Aspects of International Child Abduction.

OMB Control Number: 1405–0076.

Type of Request: Extension.

Originating Office: CA/OCS/L.

Form Number: DS–3013, 3013–s.

Respondents: Person seeking return of or access to child.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Average Time per Response: 1 hour.

Total Estimated Burden Time: 300 hours.

Frequency: On occasion.

Obligation to Respond: Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The Application Under the Hague Convention on the Civil Aspects of International Child Abduction (DS–3013 and DS 3013–s) is used by parents or legal guardians who are asking the State Department's assistance in seeking the return of, or access to, a child or children alleged to have been wrongfully removed from or retained outside of the child's habitual residence and currently located in another country that is also party to the Hague Convention on the Civil Aspects of International Child Abduction. The application requests information regarding the identities of the applicant, the child or children, and the person alleged to have wrongfully removed or retained the child or children. In addition, the application requires that the applicant provide the circumstances of the alleged wrongful removal or retention and the legal justification for the request for return or access. The State Department, as the U.S. Central Authority, uses this information to establish, if possible, the applicants' claims under the Convention; to advise applicants about available remedies under the Convention; and to provide the information necessary to the foreign Central Authority in its efforts to locate the child or children, and to facilitate return of or access to the child or children pursuant to the Convention.

Methodology: The completed form DS–3013 and DS 3013–s may be submitted to the Office of Children's Issues by mail, by fax, or electronically through *www.travel.state.gov*.

Dated: August 10, 2012.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 2012–20797 Filed 8–22–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7991]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ferdinand Hodler: View to Infinity''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Ferdinand Hodler: View to Infinity,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, NY, from on or about September 20, 2012, until on or about January 7, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 15, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–20794 Filed 8–22–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0088]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 22, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID 2012–0088 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received; go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Moulden, 202–493–3470, Turner-Fairbank Highway Research Center, Office of Corporate Research, Technology, and Innovation Management, Federal Highway Administration, Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Highway Administration Research, Development and Technology Agenda Web site.

Background: Title 23, United States Code, Section 502(a)(5) requires that Federal surface transportation research and development activities address the needs of stakeholders, including ''States, metropolitan planning organizations, local governments, the private sector, researchers, research sponsors, and other affected parties, including public interest groups.'' As part of its effort to ensure that Federal research, development and technology (RD&T) activities are addressing the most critical national challenges, the Federal Highway Administration (FHWA) is developing the RD&T Agenda Web site. This Web site will

communicate FHWA's RD&T goals, objectives and strategies to its stakeholders and highlight notable initiatives or projects that illustrate FHWA's RD&T approach. The Web site will include an electronic mechanism for stakeholders to provide feedback on the overall RD&T Agenda, FHWA's approach to addressing national transportation challenges, and potential opportunities for FHWA to collaborate with stakeholders to address them.

Respondents: Approximately 1,000 annual respondents.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 10 minutes per respondent per year.

Estimated Total Annual Burden Hours: Approximately 167 hours per year.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of computer technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: August 17, 2012.

Carl Shea,

Acting Chief, Information Technology Division.

[FR Doc. 2012–20679 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0165]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Transecurity LLC (Transecurity)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from Transecurity LLC to allow the placement of an onboard safety monitoring system (OBMS) at the bottom of windshields on commercial motor vehicles (CMVs). The Federal Motor Carrier Safety Regulations (FMCSRs) currently require antennas, transponders, and similar devices to be located not more than 6 inches below the upper edge of the windshield, outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. Transecurity is coordinating device development and the installation of camera-based monitoring systems for FMCSA in up to 500 CMVs. The exemption would enable motor carriers to participate in a field operation test to evaluate the system and allow for on-road data collection. Transecurity believes this mounting position would maintain a level of safety that is equivalent to or greater than the level of safety achieved without the exemption.

DATES: Comments must be received on or before September 24, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0165 by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the FMCSRs. On August 20, 2004, FMCSA published a final rule implementing section 4007 (69 FR 51589). Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49

CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Transecurity's Application for Exemption

Transecurity has applied for an exemption from 49 CFR 393.60(e)(1) to allow the installation of the camera-based OBMS at the bottom of the windshield on CMVs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (devices) must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

Transecurity has applied for the exemption because it wants to install the camera- based OBMS equipment in up to 500 CMVs operating throughout the United States in support of research being conducted on behalf of FMCSA. Transecurity contends that it must be able to mount the camera-based OBMSs lower than allowed under 49 CFR 393.60(e)(1) ''because the safety equipment must have a clear forward facing view of the road, and low enough to accurately scan facial features for detection of impaired driving.'' Transecurity's mounting preference for the camera-based OBMS and necessary mounting brackets is at the bottom of the windshield, and is best suited for mounting within and/or below 3 inches of the bottom of the windshield wiper sweep, and out of the driver's sightlines to the road and highway signs and signals, to the extent practicable.

FMCSA Grant of Waiver to Transecurity

Pursuant to 49 U.S.C. 31315(a) and 49 CFR part 381, subpart B, the FMCSA granted Transecurity a 90-day waiver on July 23, 2012 to allow the placement of the OBMS at the bottom of windshields on CMVs, outside of the area permitted by § 393.60 of the FMCSRs. This waiver is effective from July 24, 2012, through October 23, 2012. Up to 500 OBMS will be installed, and the affected motor carriers are listed as below:

1. DOT # 90792; Eagle Transport Corporation—Florida.
2. DOT # 252234; Holiday Tours Inc.—Randleman, NC.
3. DOT # 16377; H&W Trucking Co. Inc.—Mt. Airy, NC.
4. DOT # 348258; Associated Grocers—Baton Rouge, LA.
5. DOT # 2222676; AM Express Inc.—Escanaba, MI.

During the waiver period, these motor carriers participating in the FMCSA research field operation test must ensure that the OBMS is mounted within 3 inches of the bottom of the driver side windshield wiper sweep, and out of the driver's sightlines to the road and highway signs and signals as much as practicable. Vehicles participating in the study must carry a copy of this waiver in the vehicle.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on Transecurity's application for an exemption from 49 CFR 393.60(e)(1). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the ''Addresses'' section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: August 16, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–20752 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for the Redlands Passenger Rail Project in the Cities of San Bernardino and Redlands, CA

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Correction.

SUMMARY: This notice corrects the location of one public scoping meeting and it also changes the dates of the public scoping meetings.

DATES: The date, time, and location for the public scoping meetings are corrected to read as follows:

September 25, 2012

5:30 p.m. to 7:30 p.m.

San Bernardino Hilton, 285 East Hospitality Lane, San Bernardino, CA 92408.

September 27, 2012

5:30 p.m. to 7:30 p.m.

ESRI Café, 380 New York Street, Redlands, CA 92373.

These locations are accessible by persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Robert Chevez at Westbound Communications (909–384–8188) at least 48 hours before the meeting.

ADDRESSES: Written comments may be submitted to Mitchell A. Alderman, P.E., Director of Transit & Rail Programs, SANBAG, 1170 W. 3rd St., 2nd Floor, San Bernardino, CA 92410, or emailed to *RPRP_Public_Comments@sanbag.ca.gov.* Written comments may also be submitted to Mr. Hymie Luden, City and Regional Planner, FTA, Region 9, 201 Mission Street, Suite 1650, San Francisco, CA 94105.

In accordance with Section 6002 of SAFETEA–LU, FTA and SANBAG invite comment on the scope of the EIS, specifically on the project's purpose and need, the alternatives to be evaluated that may address the purpose and need, and the potential impacts of the alternatives considered. Comments on the EIS/DEIR must be received no later than 5:00 p.m. Pacific Standard Time on October 11, 2012. Additional information is available on SANBAG's Web site at: *http://sanbag.ca.gov/projects/redlands-transit.html* or by calling Jane Dreher, SANBAG's Public Information Officer (909–884–8276). This information will be made available at the public scoping meetings.

SUPPLEMENTARY INFORMATION: The notice published on July 31, 2012 (77 FR 45415) provided an incorrect address for one of the public scoping meetings. This notice provides a corrected address for that meeting and corrected dates for the public scoping meetings.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Alderman, P.E., Director of Transit & Rail Programs, SANBAG, 1170 W. 3rd St., 2nd Floor, San Bernardino, CA 92410, or email to *RPRP_Public_*

Comments@sanbag.ca.gov. Written requests for information may also be submitted to Mr. Hymie Luden, City and Regional Planner, FTA, Region 9, 201 Mission Street, Suite 1650, San Francisco, CA 94105.

Issued on: August 20, 2012.

Leslie T. Rogers,

Regional Administrator, FTA, Region 9.

[FR Doc. 2012–20774 Filed 8–22–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the Westside Subway Extension project, Los Angeles, CA. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before February 19, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on this project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. § 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register.** The project and actions that are the subject of this notice are:

Project name and location: Westside Subway Extension, Los Angeles County, CA.

Project sponsor: Los Angeles County Metropolitan Transportation Authority (LACMTA). *Project description:* The project will extend heavy rail transit, in a subway, nearly nine miles from the existing Metro Purple Line western terminus at the Wilshire/Western Station to a new western terminus at the Westwood/Veterans Affairs (VA) Hospital station. The project includes seven new stations and enhancements to the Division 20 Maintenance and Storage Facility located in Downtown Los Angeles to accommodate additional heavy rail vehicles. *Final agency actions:* Determination of *de minimis* impact to four Section 4(f) resources and a direct use of one Section 4(f) resource; a Section 106 Memorandum of Agreement; project-level air quality conformity; and Record of Decision (ROD), dated August 9, 2012. *Supporting documentation:* Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR), dated March 2012.

Issued on: August 20, 2012.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2012–20771 Filed 8–22–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2012–0033]

Request for Comments on a Renewal Information Collection

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 28, 2012 (FR 77 18880). No comments were received.

DATES: Comments must be submitted on or before September 24, 2012.

FOR FURTHER INFORMATION CONTACT: Sean McLaurin, NVS–422, National Highway Traffic Safety Administration, Room W55–336, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. McLaurin's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: National Driver Register (NDR).

OMB Control Number: 2127–0001.

Type of Request: Extension of Clearance.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other users obtain the information for transportation safety purposes.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: The number of respondents is 51—the fifty States and the District of Columbia.

Estimated Total Annual Burden Hours: 2,847.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments are invited on: Whether the proposed collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on July 25, 2012.

Chou-Lin Chen,

Office Director, Office of Traffic Records and Analysis.

[FR Doc. 2012–20750 Filed 8–22–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 304X)]

Union Pacific Railroad Company—Abandonment Exemption—in Pocahontas County, IA

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.95 mile line of railroad on the Royal Industrial Lead, extending from milepost 475.15 to milepost 477.10 near Laurens, in Pocahontas County, Iowa (the Line). The Line traverses United States Postal Service Zip Code 50554.

UP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 22, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 4, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, #1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by August 28, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by August 23, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: August 20, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–20729 Filed 8–22–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee. Effective August 26, 2012, the filing fee for an OFA increases from $1,500 to $1,600. *See* 49 CFR 1002.2(f)(25), *Regulations Governing Fees for Services Performed in Connection with Licensing & Related Services–2012 Update,* EP 542 (Sub-No. 19) (STB served July 27, 2012).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35658]

Mineral Range, Inc.—Acquisition and Operation Exemption—Rail Line of Lake Superior & Ishpeming Railroad Company

Mineral Range, Inc. (MRI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Lake Superior & Ishpeming Railroad Company (LSI) and to operate over: (1) 12.06 miles of rail line between milepost 73.60 at or near Landing Junction and milepost 85.66 at or near Humboldt Junction in Marquette County, Mich. (Segment 1); and (2) 1.90 miles of railbanked railroad right-of-way between milepost 85.66 at or near Humboldt Junction and milepost 87.56 at or near Humboldt in Marquette County, Mich. (Segment 2).

On January 19, 2005, a decision and notice of interim trail use or abandonment (NITU) was served in *Lake Superior & Ishpeming Railroad—Abandonment Exemption—In Marquette County, Mich.,* AB 68 (Sub-No. 4X), establishing a 180-day period under the National Trails System Act, 16 U.S.C. 1247(d), for LSI to negotiate an interim trail use/rail banking agreement for a segment of rail line extending from Humboldt Junction (milepost 85.66) to the end of the line at Republic Mine (milepost 94.5), a distance of approximately 8.9 miles that includes Segment 2. Trail negotiations

were successful and an agreement was reached between LSI and the Michigan Department of Natural Resources (MDNR). MRI now seeks to reinstitute rail service over Segment 2 as a successor in interest to LSI, an action with which LSI expressly concurs. The remaining portion of the railbanked right-of-way subject to the NITU south of Humboldt (milepost 87.56) would continue to be railbanked and used by MDNR as a recreational trail and is not at issue here.[1]

MRI certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that the projected annual revenues of MRI to be created by the subject transaction do not exceed $5 million.

The transaction is scheduled to be consummated on or after September 6, 2012 (30 days after the exemption is filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction. Petitions to stay must be filed no later than August 30, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35658 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleasing must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: August 20, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–20754 Filed 8–22–12; 8:45 am]

BILLING CODE 4915–01–P

[1] MRI simultaneously filed a petition for partial vacation of the NITU issued in *Lake Superior & Ishpeming Railroad—Abandonment Exemption—in Marquette County, Mich.,* AB 68 (Sub-No. 4X) (STB served Jan. 19, 2005). The petition will be addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 20, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0022.

Type of Review: Extension without change of a currently approved collection.

Title: Life Insurance Statement.

Form: 712.

Abstract: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1,120,200.

OMB Number: 1545–0233.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

Form: 7004.

Abstract: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 19,216,744.

OMB Number: 1545–0805.

Type of Review: Extension without change of a currently approved collection.

Title: Information return on a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

Form: 5472.

Abstract: Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 2,544,784.

OMB Number: 1545–1099.

Type of Review: Extension without change of a currently approved collection.

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

Form: 8811.

Abstract: Form 8811 is used to collect name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 4,380.

OMB Number: 1545–1120.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

Abstract: These regulations (CO–69–87 and CO–68–87) require reporting by a corporation after it undergoes an ''ownership change'' under sections 382

and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. These regulations (CO–18–90) provide rules for the treatment of options under IRC section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 220,575.

OMB Number: 1545–1254.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8396—Conclusive Presumption of Worthlessness of Debts Held by Banks (FI–34–91).

Abstract: Paragraph (d)(3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section 1.166–2(d)(3) is necessary to monitor the elections.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 50.

OMB Number: 1545–1412.

Type of Review: Extension without change of a currently approved collection.

Title: FI–54–93 (Final) Clear Reflection of Income in the Case of Hedging Transactions

Abstract: This information is required by the Internal Revenue Service to verify compliance with section 416 of the Internal Revenue Code. This information will be used to determine that the amount of tax has been computed correctly.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 22,000.

OMB Number: 1545–1431.

Type of Review: Extension without change of a currently approved collection.

Title: Substantiation Requirement for Certain Contributions IA–74–93 (Final)

Abstract: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 51,500.

OMB Number: 1545–1503.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2006–9 (formerly Rev. Proc. 96–53), Section 482—Allocations Between Related Parties.

Abstract: The information requested is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 8,200.

OMB Number: 1545–1530.

Type of Review: Extension without change of a currently approved collection.

Title: Rev. Proc. 2007–32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.

Abstract: Tip Rate Determination Agreement (Gaming Industry) Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers. Gaming Industry Tip Compliance Agreement Program Taxpayers who operate gaming establishments may enter into an agreement with the Internal Revenue Service to establish tip rates and occupational categories for all tipped employees of the taxpayer. The agreements will require substantiation of the tip rates as well.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 10,467.

OMB Number: 1545–1806.

Type of Review: Revision of currently approved collection.

Title: Asset Allocation Statement Under 338.

Form: 8883.

Abstract: Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 5,755.

OMB Number: 1545–1820.

Type of Review: Extension without change of a currently approved collection.

Title: Rev. Proc. 2003–33—Section 9100 Relief for 338 Elections.

Abstract: Pursuant to Sec. 301.9100–3 of the Procedure and Administration Regulations, this procedure grants certain taxpayers an extension of time to file an election described in Sec. 338(a) or Sec. 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 300.

OMB Number: 1545–1932.

Type of Review: Revision of currently approved collection.

Title: TD 9392—Information Return by Donees Relating to Qualified Intellectual Property Contributions (REG–158138–04).

Abstract: These regulations provide guidance for filing information returns by donees relating to qualified intellectual property contributions. The regulations affect donees receiving qualified intellectual property contributions after June 3, 2004.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 200.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–20722 Filed 8–22–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 20, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and

to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0022.

Type of Review: Revision of a currently approved collection.

Title: Customer Identification Programs for Futures Commission Merchants and Introducing Brokers.

Abstract: Futures commission merchants and introducing brokers are required to develop and maintain a customer identification program. A copy of the program must be maintained for five years. See 31 CFR 1026.100 and 31 CFR 1026.220.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 20,478.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–20746 Filed 8–22–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 20, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0087.

Type of Review: Extension without change of a currently approved collection.

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

Abstract: Bottlers and importers of alcohol beverages must adhere to numerous performance standards for statements made on labels and in advertisements of alcohol beverages. These performance standards include minimum mandatory labeling and advertising statements.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 7,071.

OMB Number: 1513–0114.

Type of Review: Extension without change of a currently approved collection.

Title: Beer for Exportation.

Form: TTB F 5130.12.

Abstract: Unpaid beer may be removed from a brewery for exportation without payment of the excise tax normally due on removal. In order to ensure that exportation took place as claimed and that untaxpaid beer does not reach the domestic market TTB requires certification on Form 5130.12.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,940.

OMB Number: 1513–0115.

Type of Review: Extension without change of a currently approved collection.

Title: Usual and Customary Business Records Relating to Wine TTB REC 5120/1.

Abstract: TTB routinely inspects wineries' usual and customary business records to ensure the proper payment of wine excise taxes due to the Federal government.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 468.

OMB Number: 1513–0116.

Type of Review: Extension without change of a currently approved collection.

Title: Bond for Drawback Under 26 U.S.C. 5131.

Form: TTB F 5154.3.

Abstract: Business that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance). Claims may be filed monthly or quarterly. Monthly claimants must file a bond on TTB F 5154.3 to protect the Government's interest.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10.

OMB Number: 1513–0121.

Type of Review: Extension without change of a currently approved collection.

Title: Labeling of Major Food Allergens.

Abstract: The collection of information involves voluntary labeling of major food allergens used in the production of alcohol beverages and also involves petitions for exemption from full allergen labeling. The collection corresponds to the amendments to the FD&C Act in Title II of Public Law 108–282, 118 Stat. 905.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 730.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–20747 Filed 8–22–12; 8:45 am]

BILLING CODE 4810–31–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2012.

SUMMARY: On April 30, 2012, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2012, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**. 77 FR 28225 (May 11, 2012). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions and policy statements related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2012, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, (202) 502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary and policy statements may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary and policy statements in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary and policy statements are necessary. This notice sets forth technical and conforming amendments to commentary and policy statements that will become effective on November 1, 2012.

Authority: USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,

Chair.

1. Amendment:

The Commentary to § 1B1.10 captioned ''Application Notes'' is amended in Note 4 by striking ''Application Note 10 to § 2D1.1'' and inserting ''the Drug Equivalency Tables in the Commentary to § 2D1.1 (*see* § 2D1.1, comment. (n.8))''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by renumbering Notes 1 through 29 according to the following table:

Before amendment	After amendment
1	1
17	2
13	3
2	4
12	5
5	6
6	7
10	8
11	9
15	10
3	11
18	12
23	13
25	14
26	15
27	16
28	17
19	18(A)
20	18(B)
29	19
21	20
24	21
8	22
7	23
22	24
4	25
14	26(A)
16	26(B)
9	26(C);

and by rearranging those Notes, as so renumbered, to place them in proper numerical order.

The Commentary to § 2D1.1 captioned ''Application Notes'', as so renumbered and rearranged, is further amended by inserting headings at the beginning of certain notes, as follows (with Notes referred to by their new numbers):

Note	Heading to be inserted at the beginning
1	''Mixture or Substance''.—
2	''Plant''.—
3	Classification of Controlled Substances.—
4	Applicability to ''Counterfeit'' Substances.—
5	Determining Drug Types and Drug Quantities.—
7	Multiple Transactions or Multiple Drug Types.—
9	Determining Quantity Based on Doses, Pills, or Capsules.—
10	Determining Quantity of LSD.—
12	Application of Subsection (b)(5).—
18	Application of Subsection (b)(13).—
23	Cases Involving Mandatory Minimum Penalties.—
25	Cases Involving ''Small Amount of Marihuana for No Remuneration''.—
26	Departure Considerations.—
26(A)	Downward Departure Based on Drug Quantity in Certain Reverse Sting Operations.—
26(B)	Upward Departure Based on Drug Quantity.—
26(C)	Upward Departure Based on Unusually High Purity.—

The Commentary to § 2D1.1 captioned ''Application Notes'', as so renumbered and rearranged and amended, is further amended as follows (with Notes referred to by their new numbers):

In Note 8(A) by striking ''Note 5'' and inserting ''Note 6'';

In Note 15 by redesignating (i), (ii), and (iii) as (A), (B), and (C), respectively;

In Note 18(A) by inserting before the period at the end of the heading the following: ''(Subsection (b)(13)(A))''; and

In Note 18(B) by inserting before the period at the end of the heading the following: ''(Subsection (b)(13)(C)B(D))'', by redesignating its component subdivision (A) (beginning ''Factors to Consider'') as (i), and that subdivision's component subdivisions (i) through (iv) as (I) through (IV), respectively, and by redesignating its component subdivision (B) (beginning ''Definitions'') as (ii).

The Commentary to § 2D1.1 captioned ''Background'' is amended by striking the fifth through eighth undesignated paragraphs as follows:

''The last sentence of subsection (a)(5) implements the directive to the Commission in section 7(1) of Public Law 111–220.

Subsection (b)(2) implements the directive to the Commission in section 5 of Public Law 111–220.

Subsection (b)(3) is derived from Section 6453 of the Anti-Drug Abuse Act of 1988.

Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, Part D (Supervised Release).'';

In the paragraph beginning ''The dosage weight'' by striking ''111 S.Ct. 1919'' and inserting ''500 U.S. 453''; and

By inserting before the paragraph beginning ''Subsection (b)(11)'' the following:

''Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, Part D (Supervised Release).

The last sentence of subsection (a)(5) implements the directive to the Commission in section 7(1) of Public Law 111–220.

Subsection (b)(2) implements the directive to the Commission in section 5 of Public Law 111–220.

Subsection (b)(3) is derived from Section 6453 of the Anti-Drug Abuse Act of 1988.''.

The Commentary to § 2D1.6 captioned ''Application Note'' is amended in Note 1 by striking ''Note 12'' and inserting ''Note 5''.

The Commentary to § 2D1.11 captioned ''Application Notes'', as amended by Amendment 3 of the amendments submitted to Congress on April 30, 2012, is further amended by renumbering Notes 1 through 9 according to the following table:

Before amendment	After amendment
4	1
1	2
5	3
6	4
7	5
8	6
9	7
2	8
3	9;

and by rearranging those Notes, as so renumbered, to place them in proper numerical order.

The Commentary to § 2D1.11 captioned ''Application Notes'', as so renumbered and rearranged, is further amended by inserting headings at the beginning of certain notes, as follows (with Notes referred to by their new numbers):

Note	Heading to be inserted at the beginning
2	Application of Subsection (b)(1).—
3	Application of Subsection (b)(2).—
4	Application of Subsection (b)(3).—
8	Application of Subsection (c)(1).—
9	Offenses Involving Immediate Precursors or Other Controlled Substances Covered Under § 2D1.1.—

The Commentary to § 2D1.11 captioned ''Application Notes'', as so renumbered and rearranged and amended, is further amended in Note 9 (as so renumbered) by striking ''Note 12'' and inserting ''Note 5''.

The Commentary to § 5G1.2 captioned ''Application Notes'', as amended by Note 7 of the amendments submitted to Congress on April 30, 2012, is further amended by amending Note 1 to read as follows:

''1. *In General.*—This section specifies the procedure for determining the specific sentence to be formally imposed on each count in a multiple-count case. The combined length of the sentences ('total punishment') is determined by the court after determining the adjusted combined offense level and the Criminal History Category and determining the defendant's guideline range on the Sentencing Table in Chapter Five, Part A (Sentencing Table).

Note that the defendant's guideline range on the Sentencing Table may be affected or restricted by a statutorily authorized maximum sentence or a statutorily required minimum sentence not only in a single-count case, *see* § 5G1.1 (Sentencing on a Single Count of Conviction), but also in a multiple-count case. *See* Note 3, below.

Except as otherwise required by subsection (e) or any other law, the total punishment is to be imposed on each count and the sentences on all counts are to be imposed to run concurrently to the extent allowed by the statutory maximum sentence of imprisonment for each count of conviction.

This section applies to multiple counts of conviction (A) contained in the same indictment or information, or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.

Usually, at least one of the counts will have a statutory maximum adequate to permit imposition of the total punishment as the sentence on that count. The sentence on each of the other counts will then be set at the lesser of the total punishment and the applicable statutory maximum, and be made to run concurrently with all or part of the longest sentence. If no count carries an adequate statutory maximum, consecutive sentences are to be imposed to the extent necessary to achieve the total punishment.''.

Section 5K2.0 is amended in subsection (d)(1) by striking ''the last sentence of 5K2.12 (Coercion and Duress), and 5K2.19 (Post-Sentencing Rehabilitative Efforts)'' and inserting ''and the last sentence of 5K2.12 (Coercion and Duress)''.

Reason for Amendment:

This proposed amendment makes certain technical and conforming changes to commentary in the *Guidelines Manual.*

First, it reorganizes the commentary to the drug trafficking guideline, § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), so that the order of the application notes better reflects the order of the guidelines provisions to which they relate. The proposed amendment also makes stylistic changes to the Commentary to § 2D1.1, such as by adding headings to certain application notes. To reflect the renumbering of application notes in § 2D1.1, conforming changes are also made to the Commentary to § 1B1.10 and § 2D1.6.

Second, it makes certain clerical and stylistic changes in connection with certain recently promulgated amendments. *See* 77 FR 28226 (May 11, 2012). The clerical and stylistic changes are as follows:

(1) Amendment 3 made revisions to § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy). This proposed amendment reorganizes the commentary to § 2D1.11 so that the order of the application notes better reflects the order of the guidelines provisions to which they relate. The proposed amendment also makes stylistic changes to the Commentary to § 2D1.11 by adding headings to certain application notes.

(2) Amendment 7 made revisions to § 5G1.2 (Sentencing on Multiple Counts of Conviction), including a revision to Application Note 1. However, the amendatory instructions published in the **Federal Register** to implement those revisions included an erroneous instruction. This proposed amendment restates Application Note 1 in its

entirety to ensure that it conforms with the version of Application Note 1 that appears in the unofficial, ''reader-friendly'' version of Amendment 7 that the Commission made available in May 2012.

(3) Amendment 8 repealed the policy statement at § 5K2.19 (Post-Sentencing Rehabilitative Efforts). However, a reference to that policy statement is contained in § 5K2.0 (Grounds for Departure). This proposed amendment revises § 5K2.0 to reflect the repeal of § 5K2.19.

[FR Doc. 2012–20786 Filed 8–22–12; 8:45 am]

BILLING CODE 2211–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In May 2012, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2013. See 77 FR 31069 (May 24, 2012). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, 202–502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2013. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2013. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2013.

As so prefaced, the Commission has identified the following priorities:

(1) Continuation of its work with Congress and other interested parties on statutory mandatory minimum penalties to implement the recommendations set forth in the Commission's 2011 report to Congress, titled *Mandatory Minimum Penalties in the Federal Criminal Justice System,* and to develop appropriate guideline amendments in response to any related legislation.

(2) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected federal sentencing practices, the appellate review of those practices, and the role of the federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system; (B) recommendations for legislation regarding federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-*Booker* federal sentencing decisions; and (D) possible consideration of amendments to the federal sentencing guidelines. The Commission also intends to work with the judicial branch and other interested parties to develop enhanced methods for collecting and disseminating information and data about the use of variances and the specific reasons for imposition of such sentences under 18 U.S.C. 3553(a).

(3) Continuation of its review of child pornography offenses and report to Congress as a result of such review. It is anticipated that any such report would include (A) a review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory and/or guideline changes that may be appropriate.

(4) Continuation of its work on economic crimes, including (A) a comprehensive, multi-year study of § 2B1.1 (Theft, Property Destruction, and Fraud) and related guidelines, including examination of the loss table and the definition of loss, and (B) consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such study.

(5) Continuation of its multi-year study of the statutory and guideline definitions of ''crime of violence'', ''aggravated felony'', ''violent felony'', and ''drug trafficking offense'', possibly including recommendations to Congress on any statutory changes that may be appropriate and development of guideline amendments that may be appropriate in response to any related legislation.

(6) Undertaking a comprehensive, multi-year study of recidivism, including (A) examination of circumstances that correlate with increased or reduced recidivism; (B) possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons; and (C) consideration of any amendments to the *Guidelines Manual* that may be appropriate in light of the information obtained from such study.

(7) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

(8) Implementation of the Food and Drug Administration Safety and Innovation Act, Public Law 112–144, and any other crime legislation enacted during the 111th or 112th Congress warranting a Commission response.

(9) Consideration of (A) whether any amendments to the *Guidelines Manual* may be appropriate in light of *Setser* v. *United States,* 132 S. Ct. 1463, __ U.S. __ (March 28, 2012); and

(B) any miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Patti B. Saris,

Chair.

[FR Doc. 2012–20791 Filed 8–22–12; 8:45 am]

BILLING CODE 2211–40–P

DEPARTMENT OF VETERANS AFFAIRS

Letter of Intent To Apply for Funding Available Under the Supportive Services for Veteran Families Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice; Letter of Intent.

SUMMARY: The Department of Veterans Affairs (VA) requests that eligible entities interested in applying for funding under the Supportive Services for Veteran Families (SSVF) Program submit a letter of intent. The SSVF Program expects to publish a notice of funding availability (NOFA) in fiscal year (FY) 2013. The NOFA will contain information concerning the SSVF Program, initial and renewal supportive services grant application processes, and amount of funding available.

DATES: Interested organizations are encouraged to submit a nonbinding letter of intent to apply for initial and renewal supportive services grants under the SSVF Program by 4:00 p.m. Eastern Time on September 28, 2012.

For a Copy of the Letter of Intent Format: Download directly from the SSVF Program Web page which can be found at *www.va.gov/homeless/ssvf.asp*. Questions should be referred to the SSVF Program Office via phone at (877) 737–0111 (this is a toll-free number) or via email at *SSVF@va.gov*. For detailed SSVF Program information and requirements, see title 38 CFR part 62.

Submission of Letter of Intent: Letters of intent should be submitted electronically to the SSVF Program Office via email at *SSVF@va.gov*.

FOR FURTHER INFORMATION CONTACT: John Kuhn, Supportive Services for Veteran Families Program Office, National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104; (877) 737–0111 (this is a toll-free number); *SSVF@va.gov*.

SUPPLEMENTARY INFORMATION: This letter of intent is requested in anticipation of a planned NOFA to be issued in FY 2013. Please refer to title 38 CFR part 62 for detailed SSVF Program information and requirements.

A. *Purpose:* The SSVF Program's purpose is to provide supportive services grants to private non-profit organizations and consumer cooperatives who will coordinate or provide supportive services to very low-income Veteran families who are residing in permanent housing, are homeless and scheduled to become residents of permanent housing within a specified time period, or after exiting permanent housing, are seeking other housing that is responsive to such very low-income veteran family's needs and preferences.

B. *Definitions:* Sections 62.2 and 62.11(a) of title 38, Code of Federal Regulations, contain definitions of terms used in the SSVF Program.

C. *Approach:* Grantees will be expected to leverage supportive services grant funds to enhance the housing stability of very low-income Veteran families who are occupying permanent housing. In doing so, grantees are required to establish relationships with local community resources. The aim of the provision of supportive services is to assist very low-income veteran families. Accordingly, VA encourages eligible entities skilled in facilitating housing stability and currently operating rapid re-housing programs (i.e., administering the Department of Housing and Urban Development's (HUD) Homelessness Prevention and Rapid Re-Housing Program, HUD's Emergency Solution Grant, or other comparable Federal or community resources) to apply for supportive services grants. The SSVF Program is not intended to provide long-term support for participants, nor will it be able to address all of the financial and supportive services needs of participants that affect housing stability. Rather, when participants require long-term support, grantees should focus on connecting such participants to mainstream Federal and community resources (e.g., HUD–VA Supportive Housing Program, HUD Housing Choice Voucher programs, McKinney-Vento funded supportive housing programs, Temporary Assistance for Needy Families, etc.) that can provide ongoing support. Assistance in obtaining or retaining permanent housing is a fundamental goal of the SSVF Program. Grantees are expected to provide case management services in accordance with 38 CFR 62.21.

D. *Authority:* The SSVF Program is authorized by title 38 U.S.C. 2044, amended by the Veterans Health Care Facilities Capital Improvement Act of 2011, Public Law 112–37. VA implements the SSVF program by regulation in title 38 CFR part 62.

Dated: August 16, 2012.

John R. Gingrich,

Chief of Staff.

[FR Doc. 2012–20761 Filed 8–22–12; 8:45 am]

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Part II

Bureau of Consumer Financial Protection

12 CFR Parts 1024 and 1026

Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z); Proposed Rule

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: Proposed rule with request for public comment.

SUMMARY: Sections 1032(f), 1098, and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) direct the Bureau to issue proposed 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 proposing to amend 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 in the Dodd-Frank Act, the proposed rule provides extensive guidance regarding compliance with those requirements.

DATES: Comments regarding the proposed amendments to 12 CFR 1026.1(c) and 1026.4 must be received on or before September 7, 2012. For all other sections including proposed amendments, comments must be received on or before November 6, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0028 or RIN 3170–AA19, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: David Friend, Michael G. Silver and Priscilla Walton-Fein, Counsels; Andrea Pruitt Edmonds, Richard B. Horn, Joan Kayagil, and Thomas J. Kearney, Senior Counsels; Paul Mondor, Senior Counsel & Special Advisor; and Benjamin K. Olson, Managing Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed 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 combine the forms. To accomplish this, the Bureau has engaged in extensive consumer and industry research and public outreach for more than a year.[1] Based on this input, the Bureau is now proposing a rule with new, combined forms. The proposed 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 form and Closing Disclosure form, the Bureau has reconciled the differences between the existing forms and combined several other mandated disclosures. 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.[2] This should reduce the burden on lenders and others in preparing forms in the future.

B. Scope of the Proposed Rule

The proposed rule applies to most closed-end consumer mortgages. The proposed rule 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 proposed rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.[3]

C. The Loan Estimate

The Loan Estimate form would replace two current Federal forms. It would replace the Good Faith Estimate designed by the Department of Housing

[1] See part III below for a discussion of the Bureau's testing of the forms with more than 100 consumers, lenders, mortgage brokers, and settlement agents. 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.

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

[3] For additional discussion of the scope of the proposed rule, see part VI below regarding section 1026.19, Coverage of Integrated Disclosure Requirements.

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.[4] The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Loan Estimate form would be completed.[5] There are sample forms for different types of loan products.[6] The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.[7]

Provision by mortgage broker. The lender may rely on a mortgage broker to provide the Loan Estimate form. However, the lender also remains responsible for the accuracy of the form.[8]

Timing. The lender or broker must give the form to the consumer within three business days after the consumer applies for a mortgage loan.[9] The proposed rule contains a specific definition of what constitutes an ''application'' for these purposes.[10]

Limitation on fees. Consistent with current law, the lender 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 lenders to charge fees to obtain consumers' credit reports.[11]

Disclaimer on early estimates. Lenders and brokers may provide consumers with written estimates prior to application. The proposed rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer would not be required for advertisements.[12]

D. The Closing Disclosure

The Closing Disclosure form would replace the current form used to close a loan, the HUD–1, which was designed by HUD under RESPA. It would also replace the revised Truth in Lending disclosure designed by the Board under TILA.[13] The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Closing Disclosure form would be completed.[14] The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

Timing. The lender must give consumers this Closing Disclosure form at least three business days before the consumer closes on the loan. Generally, if changes occur between the time the Closing Disclosure form is given and the closing, the consumer must be provided a new form. When that happens, the consumer must be given three additional business days to review that form before closing.[15] However, the proposed rule contains an exception from the three-day requirement for some common changes. These include changes resulting from negotiations between buyer and seller after the final walk-through. There also is an exception for minor changes which result in less than $100 in increased costs.[16] The Bureau seeks comment on whether to permit additional changes without requiring a new three-day period before closing.

Provision. Currently, settlement agents are required to provide the HUD–1, while lenders are required to provide the revised Truth in Lending disclosure. The Bureau is proposing two alternatives for who is required to provide consumers with the new Closing Disclosure form. Under the first option, the lender would be responsible for delivering the Closing Disclosure form to the consumer. Under the second option, the lender may rely on the settlement agent to provide the form. However, under the second option, the lender would also remain responsible for the accuracy of the form.[17] The Bureau seeks comment as to which alternative is preferable.

E. Limits on Closing Cost Increases

Similar to existing law, the proposed rule would restrict 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 could not increase: (1) The lender's or mortgage broker's charges for its own services; (2) charges for services provided by an affiliate of the lender or mortgage broker; and (3) charges for services for which the lender or mortgage broker does not permit the consumer to shop. Also unless an exception applies, charges for other services generally could not increase by more than 10 percent.[18]

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

F. Changes to APR

The proposed rule redefines the way the Annual Percentage Rate or ''APR'' is calculated. Under the rule, the APR will encompass almost all of the up-front costs of the loan.[19] This will make it easier for consumers to use the APR to compare loans and easier for industry to calculate the APR.

G. Recordkeeping

The proposed rule requires lenders to keep records of the Loan Estimate and Closing Disclosure forms provided to consumers in a standard electronic format.[20] This will make it easier for regulators to monitor compliance. The Bureau seeks comment on whether smaller lenders should be exempt from this requirement.

H. Effective Date

The Bureau is seeking comment on when this final rule should be effective. Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible. However, the Bureau understands that the final rule will

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

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

[6] Appendix H to the proposed 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.

[7] For a discussion of these disclosures, see part V.B below.

[8] This provision is in proposed § 1026.19(e)(1)(ii).

[9] This provision is in proposed § 1026.19(e)(1)(iii).

[10] The definition of ''application'' is in proposed § 1026.2(a)(3).

[11] This provision is in proposed § 1026.19(e)(2)(i).

[12] This provision is in proposed § 1026.19(e)(2)(ii).

[13] These disclosures are available at *http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf* and *http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.*

[14] The requirements for the Closing Disclosure are in proposed § 1026.38.

[15] This provision is in proposed § 1026.19(f)(1)(ii).

[16] These exceptions are in proposed § 1026.19(f)(2).

[17] These alternatives are set forth in proposed § 1026.19(f)(1).

[18] The limitations and the exceptions discussed below are in proposed § 1026.19(e)(3).

[19] These revisions are in proposed § 1026.4.

[20] This provision is in proposed § 1026.25.

require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff. 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 will have separate effective dates. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes. The Bureau is proposing to delay compliance with certain new disclosure requirements contained in the Dodd-Frank Act until the Bureau's final rule takes effect.[21]

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 $10.3 trillion in loans outstanding.[22] 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. 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.

The expansion in this market is commonly attributed to both particular economic conditions and by changes within the industry. Interest rates dropped significantly—by more than 20 percent—from 2000 through 2003.[23] Housing prices increased dramatically—about 152 percent—between 1997 and 2006.[24] Driven by the decrease in interest rates and the increase in housing prices, the volume of refinances increased from about 2.5 million loans in 2000 to more than 15 million in 2003.[25]

At the same time, advances in 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 lenders 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), such as 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 sophisticated investment mortgage-related vehicles through securities and derivative products.

Growth in the mortgage loan market was particularly pronounced in what are known as ''subprime'' and ''Alt-A'' products. Subprime products were sold both to borrowers with poor or no credit history, as well as to borrowers with good credit. The Alt-A category of loans permitted borrowers to provide little or no documentation of income or other repayment ability. Because these loans involved additional risk, they were typically more expensive to borrowers than so-called ''prime'' mortgages, though many offered low introductory rates. In 2003, subprime and Alt-A origination volume was about $400 billion. In 2006, it had reached $830 billion.[26]

So long as housing prices were continuing to increase, it was relatively easy for borrowers to refinance their loans to avoid interest rate resets and other adjustments. However, housing prices began to decline as early as 2005, slowing the growth in refinances.[27] At the same time, as the economy worsened the rates of serious delinquency (90 or more days past due or in foreclosure) for these subprime and Alt-A products began a steep increase from approximately 10 percent in 2006, to 20 percent in 2007, to over 40 percent in 2010.[28]

The impact of this level of delinquencies on the private investors who purchased these loans from the mortgage originators was severe. Private securitizations of subprime loans peaked at $465 billion in 2005, but were virtually eliminated in 2008. Private securitizations of Alt-A loans followed a similar trajectory.[29] This effect was even felt by Fannie Mae and Freddie Mac, which were large purchasers of these securitizations, and it resulted in the Federal government in late 2008 placing the GSEs into conservatorship in order to support the collapsing mortgage market.

Four years later, the United States continues to grapple with the fallout. Home prices are down 35 percent from peak to trough on a national basis, and it is not clear whether the national market has reached bottom.[30] The fall in housing prices is estimated to have resulted in about $7 trillion in household wealth losses.[31] Moreover, mortgage markets continue to rely on extraordinary U.S government support. In addition, distressed homeownership and foreclosure rates remain at unprecedented levels. Approximately 5.8 million homeowners were somewhere between 30 days late on their mortgage and in the foreclosure process as of April 2012.[32] Finally, the U.S. continues to face a stubbornly high unemployment rate, which was at 8.2 percent at the end of May 2012.[33]

While there remains debate about which market issues definitively sparked this crisis, 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.[34]

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.[35]

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[21] For additional discussion, see part V below.

[22] Inside Mortgage Finance, Outstanding 1–4 Family Mortgage Securities, Mortgage Market Statistical Annual (2012).

[23] *See* U.S. Dep't. of Hous. and Urban Dev., *An Analysis of Mortgage Refinancing, 2001–2003* (Nov. 2004), available at *www.huduser.org/Publications/pdf/MortgageRefinance03.pdf;* Souphala Chomsisengphet and Anthony Pennington-Cross, *The Evolution of the Subprime Mortgage Market,* Federal Reserve Bank of St. Louis Review, 88(1), 31, 48 (Jan./Feb. 2006), available at *http://research.stlouisfed.org/publications/review/article/5019.*

[24] The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* (Feb. 25, 2011) (FCIC Report) at 156, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[25] *An Analysis of Mortgage Refinancing, 2001–2003,* at 1.

[26] Inside Mortgage Finance: Mortgage Market Statistical Annual 2011.

[27] FCIC Report at 215.

[28] *Id.* at 217.

[29] *Id.* at 124.

[30] S&P/Case-Shiller 20-City Composite accessed from Bloomberg, LP on June 6, 2012.

[31] Board of Governors of the Federal Reserve System, *The U.S. Housing Market: Current Conditions and Policy Considerations* (Jan. 4, 2012), available at *http://www.federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf.*

[32] Lender Processing Services April 2012 Mortgage Monitor.

[33] Bureau of Labor Statistics, accessed from Bloomberg, LP on June 6, 2012.

[34] FCIC Report at 88.

[35] *Id.* at 106. ''Hybrid Adjustable Rate Mortgage'' is a term frequently used to describe adjustable rate

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.[36]

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.[37]

In the wake of this financial crisis, Congress passed the Dodd-Frank Act to address many of these concerns. In this Act, 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, TILA and RESPA, in the Bureau.[38] Congress also provided the Bureau with supervision authority for certain consumer financial protection statutes over certain entities, including insured depository institutions with total assets over $10 billion and their affiliates, and certain other non-depository entities.[39]

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.[40] 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 that will improve consumer understanding of mortgage transactions (which is the subject of this proposal).[41] In addition, the Dodd-Frank Act established other new standards concerning a wide range of mortgage lending practices, including compensation for mortgage originators[42] and mortgage servicing.[43] For additional information, see the discussion below in part II.F.

Size of the Current Mortgage Origination Market

Even with the economic downturn, approximately $1.28 trillion in mortgage loans were originated in 2011.[44] In exchange for a mortgage loan, borrowers promise to make regular mortgage payments and provide their home or real property as collateral. The overwhelming majority of homebuyers use mortgage loans to pay for at least some of their property. In 2011, 93 percent of all new home purchases were financed with a mortgage loan.[45]

Borrowers may take out mortgage loans in order to purchase a new home, to refinance an existing mortgage, or to access home equity. Purchase loans and refinances produced 6.3 million new mortgage loan originations in 2011 alone.[46] The proportion of loans that are for purchases as opposed to refinances varies with the interest rate environment. In 2011, 65 percent of the market was refinance transactions and 35 percent was purchase loans, by volume.[47] Historically the distribution has been more even. In 2000, refinances accounted for 44 percent of the market while purchase loans comprised 56 percent, and in 2005 the two products were split evenly.[48]

Using a home equity loan, a homeowner can use their equity as collateral in exchange for a loan. The loan proceeds can be used, for example, to pay for home improvements or to pay off other debts. These home equity loans resulted in an additional 1.3 million mortgage loan originations in 2011.[49]

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.[50] 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.[51] 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.[52]

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.''

[36] *Id.* at 109.

[37] *Id.* at 111.

[38] Sections 1011 and 1021 of title X of the Dodd-Frank Act, the ''Consumer Financial Protection Act,'' Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603.

[39] Sections 1024 through 1026 of title X of the Dodd-Frank Act, codified at 12 U.S.C. 5514–5516.

[40] Section 1411 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c.

[41] 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.

[42] Sections 1402 through 1405 of the Dodd-Frank Act, codified at 15 U.S.C. 1639b.

[43] 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, and 1639g.

[44] Moody's Analytics, Credit Forecast (2012). Reflects first-lien mortgage loans.

[45] Inside Mortgage Finance, New Homes Sold by Financing, Mortgage Market Statistical Annual (2012).

[46] Moody's Analytics, Credit Forecast (2012). Reflects first-lien mortgage loans.

[47] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.

[48] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.

[49] Moody's Analytics, Credit Forecast (2012). Reflects open-end and closed-end home equity loans.

[50] 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), p. 6, 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.*

[51] James Lacko and Janis Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms,* Federal Trade Commission, p. 26 (June 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.*

[52] 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-A23090727-bar-gill.pdf.*

Research points to a relationship between consumer confusion about loan terms and 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.[53] 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.[54] 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. Both factors can vary tremendously, making the home purchase especially complex. Furthermore, 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, 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,[55] 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. Today, fixed rate mortgages are the most common mortgage product, accounting for 87 percent of the mortgage loan market in 2011.[56] Adjustable rate mortgages accounted for only 13 percent of the mortgage loan market in 2011, although they have been more popular in the past.[57] Adjustable-rate mortgages accounted for 30 percent of mortgage loan volume in 2000, and reached a recent high of 50 percent in 2004.[58]

Borrowers are usually required to make payments on a monthly basis. These payments typically are calculated to pay off the entire loan balance by the time the loan term ends.[59] 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.

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, and homeowner's insurance. The borrower may pay an application or origination fee. Lenders 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. There are two different kinds of 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. 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.

Borrowers can apply to multiple loan originators in order to compare the loans that they are being offered. Once they have decided to move forward with the loan, the borrower must notify the loan originator. The loan originator will

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

[54] U.S. Government Accountability Office, *Alternative Mortgage Products: Impact on Default Remains Unclear, but Disclosure of Risks to Borrowers Could Be Improved* (Sept. 20, 2006), available at *http://www.gao.gov/new.items/d061112t.pdf.*

[55] Types of loan products include a fixed rate loan, adjustable rate loan, and interest-only loan.

[56] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.

[57] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.

[58] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.

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

typically wait to receive this notification before taking more information from the borrower and giving the borrower's application to a loan underwriter.

Mortgage Processing. A loan underwriter uses the application and additional information to confirm initial information provided by the borrower. 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, as discussed above, lenders may require borrowers to retain title insurance, homeowner's insurance, private mortgage insurance, and other services. The lender may allow the borrower to shop for certain closing services on their 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 participate at closing, including the borrower and the settlement agent.

The settlement agent ensures that all the closing requirements are met, and that all fees are collected. The settlement agent also completes all of the closing documents. 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, 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.'' *Id.* 2601(b)(1). In addition to providing consumers with appropriate disclosures, the purposes of RESPA include 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. *Id.* 2601. 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.[60]

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. *Id.* 2602(3). 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 * * *.'' *Id.* 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.[61] *Id.* 2603. The law further requires that form ''conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement * * *.'' *Id.* 2603(a). Section 5 of RESPA provides for a booklet to help consumers applying for loans to finance the purchase of residential real estate from lenders that make federally related mortgage loans to understand the nature and costs of real estate settlement services. *Id.* 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 * * *.'' *Id.* 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-day period. *Id.* 2604(d).

Historically, Regulation X of the Department of Housing and Urban Development (HUD), 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).[62] 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

[60] Public Law 101–625, 104 Stat. 4079 (1990), sections 941–42.

[61] 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.'' 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).

[62] 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).

rules regarding the accuracy of the estimates provided to consumers. The final rule required re-disclosure of the good faith estimate form when the actual costs increased beyond a certain percentage of the estimated amounts, and permitted such increases only under certain specified circumstances. *Id.* at 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.[63] HUD issued informal guidance regarding the final rule on its Web site, in the form of frequently asked questions [64] (HUD RESPA FAQs) and bulletins [65] (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 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.'' *Id.* 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.'' *Id.* 1602(g).

TILA section 128 requires that, for closed-end credit, the disclosures generally be made ''before the credit is extended.'' *Id.* 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.'' *Id.* 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.'' *Id.* 1638(b)(2)(D).

Historically, Regulation Z of the Board of Governors of the Federal Reserve System, 12 CFR part 226, has implemented TILA. TILA section 128's requirement that the disclosure statement be provided before the credit is extended (final TILA disclosure) is implemented in 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 (MDIA).[66] 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).[67] 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

[63] 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.*

[64] *New RESPA Rule FAQs,* available at *http://portal.hud.gov/hudportal/documents/huddoc?id=resparulefaqs422010.pdf.*

[65] *RESPA Roundup Archive,* available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/resroundup.*

[66] MDIA is contained in sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

[67] 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.

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 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.[68] 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.[69]

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 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.[70] 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 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 (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 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).

Effective July 21, 2011, the Dodd-Frank Act transferred rulemaking authority for TILA to the Bureau.[71] *See* sections 1061 and 1100A of the Dodd-Frank Act. 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,[72] 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.''[73] 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

[68] 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.*

[69] As discussed in the 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).

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

[71] 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.

[72] Public Law 104–208, 110 Stat. 3009 (1996).

[73] *Id.,* section 2101.

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.[74]

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).[75] 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 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).[76] 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 complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and RESPA.''[77] 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 mandated that the Bureau establish a single disclosure scheme under TILA and RESPA. Now, nearly 16 years after Congress first directed the Board and HUD to integrate the disclosures under TILA and RESPA, the Bureau publishes this proposed 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 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.[78] Subtitle C of the Consumer Financial Protection 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 is publishing this proposed rule pursuant to that mandate and the parallel mandates established by the conforming amendments to RESPA and TILA, discussed above.

F. Other Rulemakings

In addition to this proposal, the Bureau currently is engaged in six other rulemakings relating to mortgage credit

[74] *Id.*, section 2102(b).

[75] 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.*

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

[77] 74 FR 43232, 43233.

[78] The Consumer Financial Protection Act is title X, ''Bureau of Consumer Financial Protection,'' of the Dodd-Frank Act, Public Law 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 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.

to implement requirements of the Dodd-Frank Act:

• *HOEPA:* On the same day that this proposal is released by the Bureau, the Bureau is releasing a proposal to implement Dodd-Frank Act requirements expanding 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 (2012 HOEPA Proposal). 15 U.S.C. 1602(bb) and 1639.[79]

• *Servicing:* The Bureau is in the process of developing a proposal to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, and payment crediting, as well as forms for mortgage loan periodic statements and ''hybrid'' 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. The Bureau has publicly stated that in connection with the servicing rulemaking the Bureau is considering proposing rules on reasonable information management, early intervention for troubled and delinquent borrowers, and continuity of contact, pursuant to the Bureau's authority to carry out the consumer protection purposes of RESPA in section 6 of RESPA, as amended by Dodd-Frank Act section 1463. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g.

• *Loan Originator Compensation:* The Bureau is in the process of developing a proposal to implement provisions of the Dodd-Frank Act requiring certain creditors and mortgage loan originators to meet duty of care qualifications and prohibiting mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions, pursuant to TILA section 129B as established by Dodd-Frank Act sections 1402 and 1403. 15 U.S.C. 1639b.

• *Appraisals:* The Bureau, jointly with Federal prudential regulators and other Federal agencies, is in the process of developing a proposal to implement Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, appraisal management companies, and automated valuation models, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471, 15 U.S.C. 1639h, and sections 1124 and 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as established by Dodd-Frank Act sections 1473(f), 12 U.S.C. 3353, and 1473(q), 12 U.S.C. 3354, respectively. In addition, the Bureau is developing rules to implement section 701(e) of the Equal Credit Opportunity Act (ECOA), as amended by Dodd-Frank Act section 1474, to require 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 (collectively, Appraisals Rulemaking). 15 U.S.C. 1691(e).

• *Ability to Repay:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring creditors to determine that a consumer can repay a mortgage loan and establishing standards for compliance, such as by making a ''qualified mortgage,'' pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411 and 1412 (Ability to Repay Rulemaking). 15 U.S.C. 1639c.

• *Escrows:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring certain escrow account disclosures and exempting from the higher-priced mortgage loan escrow requirement loans made by certain small creditors, among other provisions, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461 and 1462 (Escrows Rulemaking). 15 U.S.C. 1639d.

With the exception of the requirements being implemented in this rulemaking, the Dodd-Frank Act requirements referenced above generally will take effect on January 21, 2013 unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. To provide an orderly, coordinated, and efficient comment process, the Bureau is generally setting the deadlines for comments on this and other proposed mortgage rules based on the date the proposal is issued, instead of the date this notice is published in the **Federal Register**. Specifically, as discussed below, it may be appropriate to finalize proposed §§ 1026.1(c) and 1026.4 in conjunction with the final rules adopted on or before January 21, 2013. Therefore, the Bureau is providing 60 days for comment on those proposals (until September 7, 2012), which will ensure that the Bureau receives comments with sufficient time remaining to issue final rules by that date. For the other portions of this proposed rule (including the Paperwork Reduction Analysis in part IX below), the Bureau is providing 120 days (until November 6, 2012). Because the precise date this notice will be published cannot be predicted in advance, setting the deadlines based on the date of issuance will allow interested parties that intend to comment on multiple proposals to plan accordingly.

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 is coordinating carefully the development of the proposals and final rules identified above. Each rulemaking will adopt new regulatory provisions to implement the various Dodd-Frank Act mandates described above. In addition, each of them may include other provisions the Bureau considers necessary or appropriate 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.

Thus, many of the rulemakings listed above involve issues that extend across two or more rulemakings. In this context, each rulemaking may raise concerns that might appear unaddressed if that rulemaking were viewed in isolation. For efficiency's sake, however, the Bureau is publishing and soliciting comment on proposed answers to certain issues raised by two or more of its mortgage rulemakings in whichever rulemaking is most appropriate, in the Bureau's judgment, for addressing each specific issue. Accordingly, the Bureau urges the public to review this and the other mortgage proposals identified above, including those previously published by the Board, together. Such a review will ensure a more complete understanding of the Bureau's overall approach and will foster more comprehensive and informed public comment on the Bureau's several proposals, including provisions that may have some relation to more than one rulemaking but are being proposed for comment in only one of them.

For example, as discussed in detail in the section-by-section analysis under proposed § 1026.4 below, this proposal includes a simpler, more inclusive definition of the finance charge, similar to what the Board proposed in its 2009 Closed-End Proposal. *See* 74 FR 43232, 43241–45 (Aug. 26, 2009). The Board recognized at that time that the more inclusive finance charge would cause more loans to be considered higher-priced mortgage loans under § 1026.35 and would expand the coverage of

[79] Available at *http://www.consumerfinance.gov/notice-and-comment/.*

HOEPA and similar State laws. *Id.* at 43244–45. For these reasons, in its 2010 Mortgage Proposal, the Board proposed to retain the existing treatment of third-party charges in the points and fees definition, notwithstanding the proposed expansion of the finance charge for disclosure purposes. 75 FR 58539, 58637–38 (Sept. 24, 2010). Similarly, the Board's 2010 Mortgage Proposal introduced a new metric for determining coverage of the higher-priced mortgage loan protections to be used in place of a transaction's APR, known as the ''transaction coverage rate'' (TCR), which does not reflect the additional charges that are reflected in the disclosed APR under the more inclusive finance charge definition. *Id.* at 58660–62.

The Bureau recognizes, as did the Board, that the proposed more inclusive finance charge could affect the coverage of the higher-priced mortgage loan and HOEPA protections. The Bureau also is aware that, consequently, a more inclusive finance charge has implications for the HOEPA, Appraisals, Ability to Repay, and Escrows rulemakings identified above. Those impacts are analyzed below, but the Bureau believes that it is also helpful to analyze potential mitigation measures on a rule-by-rule basis. Accordingly, the Bureau expects to seek comment in the HOEPA and Appraisals rulemakings on whether and how to account for the implications of the more inclusive finance charge on those specific regulatory regimes, for instance by adopting the TCR as previously proposed by the Board.[80]

III. Outreach and Consumer Testing

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. 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 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). 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.

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 such 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.[81] Also, HUD contracted with Kleimann to assist in the design and consumer testing for its revised good faith estimate and settlement statement forms.[82]

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.[83] 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.[84] In its 2009 Closed-End Proposal, the Board cited a reduction in ''information overload'' as one of the potential benefits of its plan to harmonize the TILA and RESPA disclosures in collaboration with HUD.[85] 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.[86] 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

[80] The Board already sought comment on this issue in its proposals to implement the ability to repay and escrow requirements.

[81] 72 FR 14940, 14944 (Mar. 29, 2007); 74 FR 62890, 62893 (Dec. 1, 2009).

[82] 73 FR 14030, 14043; 73 FR 68204, 68265.

[83] *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).

[84] 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).

[85] 74 FR 43232, 43234.

[86] *See* Macro 2009 Closed-End Report at 19. For additional discussion regarding information overload, see the section-by-section analysis to proposed § 1026.37(l).

caused many problems with the process.[87]

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.[88] 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 Congress intended.[89]

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 looking for, 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 under applicable law, such as the Special Information Booklet required by section 5 of RESPA, or through other means. In addition, the Bureau understood that it would provide additional educational information and tools on its Web site and place a Web site 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 also believed the design should highlight on the first page the most important loan information that consumers readily understand and use to evaluate and compare loans, placing more detailed and technical information later in the disclosure. 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 Loan Estimate (*i.e.,* the disclosure to be provided in connection with a consumer's application integrating the RESPA GFE and the early TILA disclosure). 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 brokers, and settlement agents.

B. 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 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).[90] 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 public feedback on the prototype disclosure forms.[91] 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 Web site or posting the prototypes to the Bureau's blog on its Web site and providing an opportunity for the public to email feedback 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 identifying additional information that should be included.[92]

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,

[87] 73 FR 14030, 14031.

[88] Public Law 96–221, 94 Stat 132 (1980).

[89] Public Law 96–221, Depository Institutions Deregulation and Monetary Control Act of 1980, Senate Report No. 96073 (Apr. 24, 1979).

[90] 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).

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

[92] 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.*

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 supplemental feedback received through the KBYO process, the Bureau revised the prototype disclosure forms for the next round of testing. This iterative process helped the Bureau develop forms that enable consumers to understand and compare mortgage loans and that 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 is publishing on its Web site in conjunction with this proposed rule.[93]

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 (*i.e.,* the disclosure provided in connection with the closing of the mortgage loan that integrates the RESPA settlement statement and the final TILA 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 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 Web site and over 27,000 public comments and emails about the prototype disclosures.

C. Ongoing Stakeholder Outreach

Throughout the 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 proposed 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, 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 this proposal, the Bureau also considered comments provided in response to its December 2011 proposal 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 Proposal). That proposal 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 has proposed to do so in this rulemaking. In addition, other relevant comments received in response to the 2011 Streamlining Proposal 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).[94] 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 Web site for review by the general public as well as the small entities participating in the panel process.[95] 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 administrative record in this rulemaking.[96] The Bureau has carefully considered these findings and recommendations in preparing this proposal and has addressed certain specific examples below.

In addition, the Bureau held roundtable meetings with other Federal banking and housing regulators, consumer advocacy groups, and

[93] 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.*

[94] 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)).

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

[96] *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.*

industry representatives regarding the Small Business Review Panel Outline. At the Bureau's request, many of the participants provided feedback, which the Bureau has used in preparing this proposal.

E. Next Steps

The public may submit comments on the proposed rule for 120 days after issuance (with the exception of the proposed amendments to §§ 1026.1(c) and 1026.4 that have a shorter 60-day comment period as discussed below). These comments will be available to the public, as will summaries of written or oral presentations in accordance with the Bureau's ex parte policy.[97] During the comment period and after it closes, the Bureau will carefully review and analyze the comments.

Once the Bureau has completed its review and analysis of the comments, it will consult with other Federal agencies and determine whether changes should be made to the proposed forms or rules. If changes are contemplated to the forms, the Bureau may conduct additional qualitative testing to evaluate the effectiveness of those changes. Whether or not changes are made, the Bureau may conduct large-scale quantitative testing of the forms to confirm that the forms aid consumers' understanding of mortgage transactions, if appropriate. On March 28, 2012, the Bureau published a notice for comment under the Paperwork Reduction Act in connection with this quantitative testing, specifically inviting comment on whether the information collected will have practical utility, the accuracy of the Bureau's burden hour estimates, and ways to enhance the quality of the information collected and minimize the burden on respondents.[98] The Bureau received no comments to this notice.

During the Small Business Review Panel, several small business representatives requested that the Bureau explore the feasibility of conducting testing of the disclosure forms on actual loans before issuing a final rule. *See* Small Business Review Panel Report at 28. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau is considering testing the forms on actual loans after reviewing comments received in connection with this proposal, and making any appropriate revisions to the proposed forms.

After the Bureau has completed the appropriate steps, it will prepare and issue a final rule. However, as discussed below in part V.A, the Bureau understands from the Small Business Review Panel process and from other outreach that lenders, settlement agents, and others will need a period of time to update their systems and processes to comply with the final rule and to train their employees. Accordingly, the Bureau is asking for comment on a time period that strikes the appropriate balance between providing consumers with improved disclosures as soon as possible and providing industry with the necessary time to come into compliance.

In addition, 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. The Bureau also understands from its other outreach efforts that industry has experienced difficulties in complying with HUD's 2008 RESPA Final Rule, in part because of a lack of detailed guidance in HUD's 2008 RESPA Final Rule, and the many informal interpretations of the rule issued by HUD in the HUD RESPA FAQs and HUD RESPA Roundups. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the proposed rule contains detailed provisions regarding the completion of the integrated disclosures, multiple examples of completed disclosures forms in appendix H to Regulation Z, and additional guidance and clarification in the Bureau's official commentary to Regulation Z. Such detailed guidance has, of course, added significant length to the proposed rule. The Bureau solicits comment on whether the level of detail in the proposed regulations and guidance (including the number of examples illustrating what is and is not permitted) will make compliance more, rather than less, burdensome and whether the Bureau should adopt a less prescriptive approach in the final rule.

IV. Legal Authority

The Bureau is issuing this proposed 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.[99] 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.'' [100] TILA, RESPA, and title X of the Dodd-Frank Act are Federal consumer financial laws.[101] 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

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.[102] The

[97] CFPB Bulletin 11–3 (August 16, 2011), available at *http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExParte PresentationsRulemakingProceedings.pdf.*

[98] 77 FR 18793 (Mar. 28, 2012).

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

[100] 12 U.S.C. 5581(a)(1).

[101] 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).

[102] 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

Continued

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.

Although Congress imposed this integrated disclosure requirement, it did not fully 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 certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[103] 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 implicit authority to issue regulations that reconcile certain provisions of TILA and RESPA to carry out Congress's mandate to integrate the statutory disclosure requirements. For the reasons discussed in this notice, the Bureau is proposing 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

The proposed 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.[104]

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. 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 tied to 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 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[105] 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 proposing regulations to carry out TILA's purposes and is proposing 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 thereof, or to facilitate compliance. In developing these aspects of the proposal 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 any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. 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:

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).

[103] 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).

[104] As discussed in part II above, prior to the Dodd-Frank Act, rulemaking authority over TILA was vested in the Board and rulemaking authority over RESPA was vested in HUD. The Dodd-Frank Act transferred rulemaking authority for TILA and RESPA to the Bureau, effective July 21, 2011. *See* Dodd-Frank Act sections 1061, 1098, and 1100A. The Bureau implements the proposed rule pursuant to its authorities in section 1061 of the Dodd-Frank Act.

[105] 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.

(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 proposing to exempt certain transactions from the requirements of TILA pursuant to its authority under TILA section 105(f). In developing this proposal under TILA section 105(f), the Bureau has considered the relevant factors and determined that the proposed exemptions may be 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 on a variety of bases, including when the Bureau finds the terms, acts, or practices are not in the interest of the borrower. In developing proposed rules under TILA section 129B(e), the Bureau has considered whether the proposed rules are in the interest of the borrower, as required by the statute. For the reasons discussed in this notice, the Bureau is proposing 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 * * *'' RESPA section 2(a); 12 U.S.C. 2601(a). In the past, 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 proposed rules under RESPA section 19(a) for this proposal, the Bureau has considered the purposes of RESPA, including to cause 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 proposing 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, 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, this proposal 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, the Bureau proposes to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and RESPA that carry out the purposes 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(a). 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 proposed rules under Dodd-Frank Act section 1032(a) for this proposal, 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 testing. For the reasons discussed in this notice, the Bureau is proposing 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, using a clear format and design, such as 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 analysis for proposed §§ 1026.37(o) and 1026.38(t), the Bureau is proposing certain model disclosures for transactions subject to TILA, and standard forms for transactions subject to both TILA and RESPA. For the reasons discussed in this notice, the Bureau is proposing 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 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 modify the disclosure requirements of TILA and RESPA.

In developing proposed rules for residential mortgage loans under Dodd-Frank Act section 1405(b) for this proposal, 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 proposing portions of this rule pursuant to its authority under Dodd-Frank Act section 1405(b).

V. Mandatory Compliance

A. Implementation Period

As discussed in part II.E above, the Bureau is proposing rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA, not later than July 21, 2012, consistent with the requirements of sections 1032(f), 1098, and 1100A of the Dodd-Frank Act. 12 U.S.C. 2603(a); 5532(f); 15 U.S.C. 1604(b). The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures in connection with this mandate to integrate disclosure requirements or provide a specific amount of time for entities subject to those rules to come into compliance.

As discussed in part II, 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. The Bureau must balance these statutory objectives in considering the length of the implementation period. The Bureau believes requiring industry to implement the requirements of the final rule as soon as practicable after its issuance will benefit consumers by expediting the use of the integrated disclosure forms, which will improve consumer understanding of mortgage loan transactions. At the same time, the Bureau recognizes that the creditors, mortgage brokers, settlement agents, and other entities affected by the proposed rule will incur one-time compliance costs, such as software upgrades to generate the integrated disclosure forms, training staff and related parties to use the new disclosure forms, updating compliance systems and processes, and obtaining legal guidance.[106] Consequently, the Bureau believes that a reasonable implementation period would help facilitate compliance and potentially reduce the one-time costs that may be incurred by the entities affected by the rule.

The Bureau is mindful that small entities [107] may face unique challenges in complying with the rule. During the SBREFA Small Business Review Panel process,[108] 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.[109] As detailed in the Panel Report, the Panel recommended that the Bureau provide a compliance period that permits sufficient time for small entities to make necessary system upgrades and provide training, and that the Bureau solicit public comment on the amount of time needed for such upgrades and training.[110] Moreover, industry feedback generally in response to the Bureau's Small Business Review Panel process stated that an implementation period for the final rule should provide sufficient time for training, systems development, and the operational changes that the rule will necessitate.

In feedback provided during the SBREFA process and through other

[106] These one-time costs are discussed in the section 1022 analysis in part VII, below, with respect to covered persons as defined for purposes of the Dodd-Frank Act, and the initial regulatory flexibility analysis in part VIII, below, with respect to small entities as defined for purposes of the Regulatory Flexibility Act (RFA).

[107] The term ''small entities'' means those entities defined as small entities for purposes of the RFA, as discussed further in part VIII, below. The terms ''large entities'' or ''larger entities'' refer to all entities that are not small entities as defined for purposes of the RFA.

[108] *See* part VIII.A, below, for a discussion of the Bureau's Small Business Review Panel process.

[109] *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.

[110] *See id.* at p. 27.

industry outreach, lenders, mortgage brokers, settlement agents, and forms vendors, as well as several trade associations representing lenders, brokers, and settlement agents, requested an implementation period of at least 12 months. Because the TILA–RESPA final rule will provide important benefits to consumers, the Bureau wishes to make the rule effective as soon as possible. However, the Bureau understands that the final rule will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff. 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 will have separate effective dates. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes, and specifically requests 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 Panel Report of the Small Business Review Panel, the Bureau solicits 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 notes 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. *See, e.g.,* Small Business Review Panel Report at 30 (discussing recordkeeping requirements). Accordingly, based on the Small Business Review Panel recommendation, the Bureau solicits comment on whether any separate compliance period for larger entities should take into account the relationship between larger and smaller entities.

B. Delayed Effective Dates of Certain Disclosure Requirements Established by Title XIV of the Dodd-Frank Act

As discussed above, the Bureau is proposing rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA, not later than July 21, 2012, consistent with the requirements of section 1032(f) of the Dodd-Frank Act. 12 U.S.C. 5532(f). The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures.

In addition to this integrated disclosure requirement in title X, various provisions of title XIV of the Dodd-Frank Act amend TILA, RESPA, and other consumer financial laws to impose new pre-consummation disclosure requirements for mortgage transactions. 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 integrated TILA–RESPA disclosures required by section 1032(f) of the Dodd-Frank Act. If regulations that are required to implement the disclosure requirements in title XIV are not prescribed in final form within eighteen months after the designated transfer date (*i.e.,* by January 21, 2013), institutions must comply with the statutory requirements on that date. Dodd-Frank Act section 1400(c)(3); 15 U.S.C. 1601 note.

The Bureau believes that implementing a single, consolidated disclosure that satisfies section 1032(f) and certain of the disclosure requirements in title XIV of the Dodd-Frank Act will benefit consumers and facilitate compliance with TILA and RESPA. That is, the Bureau believes that both consumers and industry will benefit by incorporating many of the disclosure requirements in title XIV into this proposal (collectively, the ''Affected Title XIV Disclosures''). Consumers will benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way. Lenders and settlement agents will 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. However, given the broad scope and complexity of this rulemaking and the 120-day comment period provided by this proposal, a final rule will not be issued by January 21, 2013. Absent a final implementing rule, institutions would have to comply with the Affected Title XIV Disclosures on that date due to the statutory requirement that any section of title XIV for which regulations have not been issued by January 21, 2013 shall take effect on that date. 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. 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. Moreover, implementing the title XIV disclosures separately from the integrated TILA–RESPA disclosure would increase compliance costs and burdens on industry. 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.[111]

Accordingly, and for the further reasons set forth below, the Bureau proposes to implement the Affected Title XIV Disclosures by delaying those requirements by temporarily exempting entities from the requirement to comply on January 21, 2013, until a final rule implementing the integrated TILA–RESPA disclosures take effect, 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. 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 disclosure for consumers and reduce burden on industry. The Bureau will issue a final

[111] Certain of the Affected Title XIV Disclosures highlight that Congress did not intend for the title XIV disclosure requirements and the integrated TILA–RESPA disclosure 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. 1638(b)(1). Therefore, these sections are directly implicated by the integrated TILA–RESPA requirement.

rule finalizing the proposed delay prior to January 21, 2013.

Specifically, as set forth in the section-by-section analysis to proposed § 1026.1(c), the Bureau proposes to delay those requirements by temporarily exempting entities from the requirement to comply on January 21, 2013. This is, in effect, a delay of the effective date of the following statutory provisions:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).[112]
- 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. Dodd-Frank Act section 1414(d); TILA section 129C(h).
- Disclosure regarding mandatory escrow accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure regarding waiver of escrow at consummation. 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 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 128(b)(4).
- Disclosure of settlement charges and fees and the approximate amount of the wholesale rate of funds. Dodd-Frank Act section 1419; TILA section 128(a)(17).
- Disclosure of mortgage originator fees. 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 fee. Dodd-Frank Act section 1475; RESPA section 4(c).

The Bureau is not proposing to delay the effective date for the following disclosure requirements found in title XIV of the Dodd-Frank Act, and therefore these provisions are not Affected Title XIV Disclosures for purposes of this discussion. These provisions will be implemented in separate rulemakings, which are expected to be proposed in summer 2012 and finalized by January 21, 2013, with the specific effective dates set out in the final rules for those specific rulemakings.

- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(a). The Bureau does not propose to delay this requirement because it applies, for the most part, to the period after consummation.
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B). The Bureau does not propose to delay this requirement because it applies broadly to ''loan documents.'' In the integrated TILA–RESPA final rule, the Bureau will harmonize the loan originator identifier provisions of this proposal with the separate rulemaking implementing TILA section 129B(b)(1)(B).
- Disclosure regarding waiver of escrow after consummation. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B). The Bureau does not propose to delay this requirement because it applies to the period after consummation and because it will be implemented by final rule pursuant to an outstanding proposal published by the Board. 76 FR 11598 (Mar. 2, 2011).
- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d). The Bureau does not propose to delay this requirement because it overlaps substantially with an existing disclosure requirement under ECOA (see below) and must be implemented through an interagency rulemaking. In the integrated TILA–RESPA final rule, the Bureau plans to harmonize the appraisal notification provisions of this proposal with the separate rulemaking implementing TILA section 129H(d), so that once the integrated form is finalized creditors will be able to use the integrated forms to satisfy the 129H(d) requirement.
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; ECOA section 701(e)(5). The Bureau does not propose to delay this requirement because it replaces an existing disclosure requirement under ECOA that is typically provided separately from other disclosures. In the integrated TILA–RESPA final rule, the Bureau will harmonize the provisions with the separate rulemaking implementing ECOA section 701(e)(5), so that once the integrated form is finalized creditors will be able to use it to satisfy the ECOA requirement.

As discussed in the section-by-section analysis to proposed § 1026.19, the integrated disclosure provisions of this proposal apply to closed-end transactions secured by real property, other than reverse mortgages as defined in § 1026.33(a). However, under the statute, the Affected Title XIV Disclosures vary in scope and are in some cases broader than the scope of the proposed integrated disclosure provisions.[113] For example, certain of the Affected Title XIV Disclosures apply to open-end credit plans,[114] transactions secured by dwellings that are not real property,[115] and/or reverse mortgages,[116] which are not the subject of this rulemaking. However, because the final scope of the integrated disclosure provisions is not yet known, the Bureau is proposing to delay the Affected Title XIV Disclosures to the fullest extent those requirements could apply under the statutory provisions. However, the Bureau also solicits comment on whether the final rule implementing the integrated disclosures should implement the Affected Title

[112] 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 by HUD. That provision is implemented in the Bureau's 2012 HOEPA Proposal, which 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.

[113] Except as described below, the Affected Title XIV Disclosures apply to ''residential mortgage loans,'' which are defined in TILA section 103(cc)(5). 15 U.S.C. 1602(cc)(5). TILA section 129C(f)(1) (requiring a negative amortization warning) applies to open- or closed-end consumer credit plans secured by a dwelling. 15 U.S.C. 1639c(f)(1). TILA section 129D(h) (disclosure regarding mandatory escrow accounts) applies to consumer credit transactions secured by a first lien on the principal dwelling of the consumer, other than open-end credit plans and reverse mortgages. 15 U.S.C. 1639d(h). TILA section 129D(j)(1)(A) applies to consumer credit transactions secured by real property. 15 U.S.C. 1639d(j)(1)(A). TILA section 128(b)(4) (requiring escrow amounts to be included in the repayment analysis disclosure) applies to consumer credit transactions secured by a first lien on the consumer's principal dwelling, other than open-end plans or reverse mortgages. 15 U.S.C. 1638(b)(4). RESPA section 4(c) (permitting an appraisal management fee disclosure) applies to ''federally related mortgage loans.'' 12 U.S.C. 2603(c). To the extent these statutory provisions do not cover transactions that are within the scope of the integrated disclosure provisions of this proposal (*e.g.,* vacant land), the Bureau is proposing to modify the statutory requirements to cover those transactions. See the section-by-section analysis to proposed § 1026.19.

[114] The following Affected Title XIV Disclosures apply to open-end credit plans: TILA section 129C(f) (negative amortization warning); TILA section 129D(j)(1)(A) (disclosure regarding waiver of escrow at consummation); RESPA section 4(c) (appraisal management company fee disclosure).

[115] All of the Affected Title XIV Disclosures, other than TILA section 129D(j)(1)(A) (disclosure regarding waiver of escrow at consummation) and RESPA section 4(c) (appraisal management company fee disclosure), apply to transactions secured by dwellings that are not real property.

[116] All of the Affected Title XIV Disclosures, other than TILA section 128(b)(4) (requiring repayment analysis to include escrow) and TILA section 12D(h) (mandatory escrow or impound account disclosure), apply to reverse mortgages.

XIV Disclosures for open-end credit plans, transactions secured by dwellings that are not real property, and reverse mortgages, as applicable, by requiring creditors to comply with the proposed provisions that implement those disclosure requirements.

Improving Overall Effectiveness of Disclosures

Issuing final rules implementing the Affected Title XIV Disclosures at the same time as the integrated TILA–RESPA final rule will improve the overall effectiveness of the integrated disclosure. One of TILA's primary purposes is to ''assure a meaningful disclosure of credit terms * * * and avoid the uninformed use of credit.'' TILA section 102(a); 15 U.S.C. 1601(a). Similarly, one purpose of RESPA is to improve advance disclosure of settlement costs. RESPA section 2(b)(1); 12 U.S.C. 2601(b)(1). As discussed above, however, TILA, RESPA, and current Regulations Z and X generally require that consumers receive two separate disclosures after applying for a mortgage loan, and then receive two additional separate disclosures prior to closing on that loan. Concerns have been raised that duplicative disclosures may reduce consumer understanding of mortgage loan transactions and increase burden on industry. Thus, when viewed together, the duplicative disclosures required by TILA and RESPA may inhibit consumers' understanding of their loans. Section 1032(f) of the Dodd-Frank Act addresses these concerns by directing the Bureau to integrate these disclosure requirements to improve consumer understanding of mortgage disclosures.

This same rationale supports delaying the requirements of the Affected Title XIV Disclosures until such time as the Bureau issues a final rule implementing the broader TILA–RESPA integration. Incorporating the Affected Title XIV Disclosures will enable the Bureau to use the results of its consumer testing and public feedback to develop forms that include these pre-consummation disclosures in a way that could improve overall consumer understanding of mortgage loan transactions. Implementing the Affected Title XIV Disclosures in isolation could have the opposite effect, by multiplying the number of individual disclosures that consumers receive, thereby reducing the likelihood that consumers will focus on any of them.

Through consumer testing, the Bureau has specifically examined how the required disclosures should work together on the integrated disclosure to maximize consumer understanding. For example, in its consumer testing of the integrated disclosures, the Bureau tested and solicited public feedback on clauses related to the Affected Title XIV Disclosures to determine how the language will be understood by consumers, both separately and in the context of the overall form.

The Bureau estimates that, by incorporating Affected Title XIV Disclosures that would otherwise be provided separately, the total page count for pre-consummation TILA and RESPA disclosures would be reduced by as much as 50 percent. The Bureau believes that this reduction will not only improve consumer understanding of mortgage transactions, but also facilitate compliance as discussed below. Consumer testing also indicates that some disclosures are either not helpful or are detrimental to consumer understanding; as discussed in the section-by-section analysis below, the Bureau proposes to use its authority to modify these disclosures to enhance consumer understanding.

Facilitating Compliance by Reducing Regulatory Burden

As noted above, another purpose of the integrated TILA–RESPA disclosure is to facilitate compliance with the requirements and purposes of those statutes. TILA section 105(b); 15 U.S.C. 1604(b); RESPA section 4(a); 12 U.S.C. 2603(a). Delaying the effective date of the Affected Title XIV Disclosures until a rule implementing the integrated TILA–RESPA disclosure is final will further this purpose by reducing regulatory burden. A substantial burden would be imposed if entities were required to revise their systems and practices twice—once to comply with the Affected Title XIV Disclosures and again to comply with the final rule integrating the TILA and RESPA disclosures. Implementing the changes twice would be particularly burdensome because compliance with the Affected Title XIV Disclosures will involve modifying forms and systems, updating compliance manuals, and training staff regarding the new disclosures.

Implementing the Affected Title XIV Disclosures as part of the integrated TILA–RESPA rulemaking will reduce regulatory burden by allowing entities to adopt all the necessary changes at one time. Implementing a single, consolidated disclosure will also reduce ongoing regulatory burden because an integrated disclosure is less costly to provide than a series of disclosures.

Legal Authority

For the reasons discussed above, the Bureau proposes to exercise its authority under TILA section 105(a) and (f), RESPA section 19(a), Dodd-Frank section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to, in effect, delay the effective date of the Affected Title XIV Disclosures by exempting regulated entities from these provisions until a final rule implementing Dodd-Frank Act section 1032(f) takes effect. 15 U.S.C. 1604(a); 12 U.S.C. 2617(a); 12 U.S.C. 5532(a); 15 U.S.C. 1601 note. TILA section 105(a) gives the Bureau authority to adjust or except from the disclosure requirements of TILA all or any class of transactions to effectuate the purposes of TILA or facilitate compliance. As set forth above, delaying the Affected Title XIV Disclosures until such time as a final rule implementing the integrated TILA–RESPA disclosures takes effect achieves the purpose of TILA to promote the informed use of credit through a more effective, consolidated disclosure, and facilitates compliance by reducing regulatory burden associated with revising systems and practices multiple times and providing multiple disclosures to consumers.

The Bureau also proposes the exemption pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that an exemption is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

As discussed above, the Bureau believes that the exemption provides a benefit to consumers through a more effective, consolidated disclosure. Absent an exemption, the Affected Title XIV Disclosures would complicate and hinder the mortgage lending process because consumers would receive inconsistent disclosures and, likely, numerous additional pages of Federal disclosures that do not work together in a meaningful way. The Bureau also believes that the cost of credit would be increased if the Affected Title XIV Disclosures take effect independent of the larger TILA–RESPA integration

because industry would be required to revise systems and practices multiple times. The Bureau has also considered the status of mortgage borrowers in issuing the proposed exemptions, and believes the exemption is appropriate to improve the informed use of credit. The Bureau does 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 on top of existing mandated disclosures would lead to consumer confusion. The exemption allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures.

RESPA section 19(a) provides the Bureau with authority to grant exemptions from the requirements of RESPA as necessary to achieve the purposes of RESPA. As discussed above, one purpose of RESPA is to achieve more effective advance disclosure to home buyers and sellers of settlement costs. RESPA section 2(b)(1); 12 U.S.C. 2601(b). Delaying the Affected Title XIV Disclosures until such time as a final rule implementing the integrated TILA–RESPA disclosures takes effect will result in a more effective disclosure and improve consumer understanding and will facilitate compliance by reducing regulatory burden, as discussed above.

In addition, section 1405(b) of the Dodd-Frank Act gives the Bureau authority to exempt from or modify disclosure requirements for any class of residential mortgage loans if the Bureau determines that the exemption or modification is in the interest of consumers and the public. As discussed above, implementing the Affected Title XIV Disclosures with the integrated TILA–RESPA disclosure is in the interest of consumers because it allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures. Further, implementing the Affected Title XIV Disclosures as part of the integrated disclosure rulemaking is in the public interest because it produces a more efficient regulatory scheme by incorporating multiple, potentially confusing disclosures into clear and understandable forms through consumer testing.

Finally, consistent with section 1032(a) of the Dodd-Frank Act, implementing the Affected Title XIV Disclosures together with the integrated 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 believes that implementing a single, consolidated disclosure will benefit consumers and facilitate compliance with TILA and RESPA. For these reasons, the Bureau is proposing to delay the Affected Title XIV Disclosures until the Bureau issues a final rule implementing the integrated TILA–RESPA disclosure required by section 1032(f) of the Dodd-Frank Act.

The Bureau is proposing to implement the Affected Title XIV Disclosures in § 1026.1(c), which is discussed further in the section-by-section analysis below. This proposal, therefore, incorporates the Affected Title XIV Disclosures as part of the integrated disclosure. The Bureau views proposed § 1026.1(c) as prescribing the required rules in final form pursuant to Dodd-Frank Act section 1400(c)(1)(A) and the effective date of the final rule implementing the delay of the Affected Title XIV Disclosures as satisfying Dodd-Frank Act section 1400(c)(1)(B).

The Bureau plans to issue a final rule implementing this exemption before the statutory provisions take effect in January 2013. For this reason, the Bureau is providing a comment period of 60 days for the proposed amendments to § 1026.1(c), rather than the 120-day comment period provided for all other aspects of this proposed rule other than § 1026.4, to permit the Bureau to evaluate comments received in response to this aspect of the proposal before issuing a final rule. The Bureau plans to issue a final notice that would remove this regulatory exemption at the time a final rule implementing the integrated TILA–RESPA disclosure takes effect, but solicits comment on whether the regulatory exemption should sunset on a specific date.

C. Potential Exemptions from Disclosure Requirements

As discussed in part III, above, one of the Bureau's primary considerations in developing the integrated disclosures was to minimize the risk of information overload and enhance consumers' overall understanding of mortgage loan and real estate transactions. To that end, the integrated disclosures highlight information that is important to consumers in comparing and evaluating mortgage loans and deemphasize information that is secondary to consumer understanding. In addition, as discussed in the section-by-section analysis, below, the Bureau is proposing to use its exemption and modification authority to exempt transactions subject to proposed § 1026.19(e) and (f) from certain disclosure requirements that consumer testing and research indicate are confusing and unhelpful to consumers. Specifically, the Bureau is proposing 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 omit from the Loan Estimate provided three business days after receipt of the consumer's application: 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 their 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)). See the section-by-section analysis to proposed § 1026.37(l). Although the Bureau is generally proposing to require these disclosures on the Closing Disclosure provided three business days prior to consummation, the Bureau is alternatively proposing to use its exemption and modification authority to omit the creditor's cost of funds disclosure (TILA section 128(a)(17)) and the total interest percentage disclosure (TILA section 128(a)(19)) from both the Loan Estimate and the Closing Disclosure. See the section-by-section analysis to proposed §§ 1026.37(l) and 1026.38(o).

For these same reasons, the Bureau solicits comment on additional disclosures that appear on the integrated disclosures that are unhelpful or potentially confusing to consumers and whether the Bureau should 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 exempt transactions subject to proposed § 1026.19(e) and (f) from any such disclosure requirements. The Bureau believes exempting transactions from those disclosure requirements would promote the informed use of credit and facilitate compliance, consistent with TILA section 105(a). For the same reasons, the Bureau believes such exemptions would be appropriate under TILA section 105(f) for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them, and 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

would simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Any such exemption 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 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).

VI. Section-by-Section Analysis

As discussed above, 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 guidance regarding disclosures for mortgage transactions, whereas Regulation X largely relies on the GFE and HUD–1 forms. The Bureau understands that the additional detail in Regulation Z facilitates compliance by industry, which is one of the goals of this rulemaking.[117] Accordingly, the Bureau is proposing to establish the integrated disclosure requirements in Regulation Z, while making conforming and other amendments to Regulation X.[118] However, as discussed above, the Bureau solicits comment on whether the level of detail in the proposed regulations and guidance (including the number of examples illustrating what is and is not permitted) will make compliance more, rather than less, burdensome and whether the Bureau should adopt a less prescriptive approach in the final rule.

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 apply 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 25 or more acres) would be 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 remain solely subject to the existing Regulation Z disclosure requirements. Reverse mortgages are excluded from coverage of the proposed integrated disclosures and would therefore remain subject to the current Regulation X and Z disclosure requirements until the Bureau addresses those unique transactions in a separate, future rulemaking. Finally, consistent with the current rules under TILA, the integrated mortgage disclosures would not apply 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.

A. Regulation X

Section 1024.5 Coverage of RESPA

5(a) Applicability

For the reasons discussed below under proposed § 1024.5(c), the Bureau is proposing 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 is proposing a conforming amendment to § 1024.5(a) to reflect these partial exemptions pursuant to the same authority.

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 believes 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). Accordingly, the Bureau proposes to exercise its authority under RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to eliminate the Regulation X exemption. 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). Because it is unclear whether any mortgages are exempt based solely on § 1024.5(b)(1), the Bureau solicits comment on the number of loans that may be affected by this aspect of the proposal and any reasons for any continued exemption of loans on property of 25 acres or more.

5(c) Partial Exemptions for Certain Mortgage Loans

As discussed further below, the Bureau proposes to exercise its authority under RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to add new § 1024.5(c), which would exempt two types of federally related mortgage loans from coverage of the RESPA settlement cost booklet, GFE, and settlement statement requirements of §§ 1024.6, 1024.7, 1024.8, and 1024.10. This partial exemption would apply to: (1) federally related mortgage loans that are subject to the integrated disclosures the Bureau is proposing in Regulation Z § 1026.19(e) and (f) and (2) federally related mortgage loans that satisfy specified criteria associated with certain housing assistance loan programs for low- and moderate-income persons. As described further below, these exemptions are designed to create consistency with the integrated disclosures under Regulation Z and to codify a disclosure exemption previously granted by HUD. However, the exemptions would retain coverage of affected loans for all other requirements of Regulation X, such as the servicing requirements in RESPA section 6, prohibitions on referral fees and kickbacks in RESPA section 8, and limits on amounts to be deposited in escrow accounts in RESPA section 10.

5(c)(1)

Pursuant to the authority discussed above, proposed § 1024.5(c)(1) exempts from the RESPA settlement cost booklet, GFE, and settlement statement requirements of §§ 1024.6, 1024.7, 1024.8, and 1024.10 federally related mortgage loans that are subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, under proposed § 1026.19(e) and (f). As discussed in detail below, proposed § 1026.19(e) and (f) establishes the integrated disclosures

[117] 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.

[118] The Bureau is proposing to retain established regulatory terminology in Regulations X and Z for consistency.

for compliance both with sections 4 and 5 of RESPA and with TILA disclosures required for mortgage transactions, as mandated by section 1032(f) of the Dodd-Frank Act. Accordingly, compliance with §§ 1024.6, 1024.7, 1024.8, and 1024.10 is unnecessary for transactions that are subject to § 1026.19(e), (f) and (g) of Regulation Z. Because proposed § 1026.19(e) and (f) governs all closed-end transactions secured by real property other than reverse mortgages, the only federally related mortgage loans that will continue to comply with the Regulation X GFE and settlement statement requirements are reverse mortgages. The Bureau plans to address the disclosure requirements for reverse mortgages in a separate later rulemaking, at which time the Bureau may revise or eliminate the remaining disclosure provisions in Regulation X.

5(c)(2)

Proposed § 1024.5(c)(2) exempts from the RESPA settlement cost booklet, GFE, and settlement statement requirements of §§ 1024.6, 1024.7, 1024.8, and 1024.10 federally related mortgage loans that satisfy several criteria associated with certain housing assistance loan programs for low- and moderate-income persons. This provision cross-references proposed 12 CFR 1026.3(h), which codifies an exemption issued by HUD on October 6, 2010.[119] Under the HUD exemption, lenders need not provide the GFE and 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.

In granting this partial exemption, 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 settlement statement forms would be difficult to complete in a meaningful way and would be likely to confuse consumers who received them. Moreover, because of the limited, fixed fees involved with such transactions, the comparison shopping purpose of the 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. To facilitate compliance, the Bureau is proposing to codify this exemption in Regulations X and Z for the same reasons and under the same authority as cited by HUD. In addition, the Bureau relies on its authority under Dodd-Frank Act section 1405(b) because the proposed exemption will improve consumer awareness and understanding of transactions due to these same concerns discussed involving residential mortgage loans in the identified class of transactions and is therefore in the interest of consumers and the public.

The Bureau is proposing to adopt this exemption with the same prerequisites established by HUD. The Bureau seeks comment, however, on whether the same rationale for the exemption still would exist regardless of lien position and, therefore, the subordinate lien position should be eliminated as a requirement for the exemption. The Bureau also seeks comment concerning the prerequisite that the loan contract not ''require the payment of interest.'' As noted above, the exemption as issued by HUD requires that the loan ''carr[y] an interest rate of -0- percent.'' This wording may be interpreted narrowly to refer only to the rate of interest stated in the note or loan contract but not to other requirements or features that may serve as interest substitutes. For example, such a narrow reading would mean that loans requiring private mortgage insurance or loans having shared-equity or shared-appreciation features could qualify for this exemption, provided the note recites an interest rate of zero percent. The Bureau's wording, on the other hand, could be interpreted as disallowing such requirements and features because they are essentially interest substitutes. The Bureau therefore seeks comment on whether such requirements and features should be considered ''interest'' and, therefore, should be impermissible for loans seeking to qualify for this partial exemption. In addition, the Bureau seeks comment on other types of loan requirements and features that should be similarly deemed ''interest'' for purposes of this partial exemption. Alternatively, the Bureau seeks comment on whether this provision should be eliminated.

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

As previously discussed, the Bureau proposes 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 most closed-end transactions covered by RESPA, except for reverse mortgage transactions. Currently, the manner in which reverse mortgage transactions are disclosed on the HUD–1 or HUD–1A under appendix A of Regulation X is a source of confusion for creditors. HUD attempted to clarify the use of the RESPA settlement disclosure 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 proposes to exercise its authority under RESPA section 19(a) to modify appendix A of Regulation X to incorporate the guidance provided by the HUD RESPA FAQs because, under the proposed rule, the closing of reverse mortgage transactions will continue to be disclosed using the RESPA settlement statement. The proposed revisions can be found in the instructions for lines 202, 204 and page 3, loan terms.

The Bureau believes that adopting this guidance will improve 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 consumer and the seller in the real estate transaction, consistent with RESPA section 19(a).

Appendix B—Illustrations of Requirements of RESPA

Appendix B to part 1024 contains illustrations of requirements under RESPA. Illustration 12 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 that: the mortgage broker's fee

[119] *See http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14574.pdf.*

must be itemized in the Good Faith Estimate and on the HUD–1 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 HUD–1 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 Good Faith Estimate and listed in the 800 series of the HUD–1 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 proposes 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 part 1024.

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

As previously discussed, the Bureau proposes 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 most closed-end transactions covered by RESPA, except for reverse mortgage transactions. Currently, the manner in which reverse mortgage transactions are disclosed on the RESPA GFE under appendix C of Regulation X is a source of confusion for creditors. HUD clarified the use of the RESPA GFE in reverse mortgage transactions in the HUD RESPA FAQs. The Bureau proposes to exercise its authority under RESPA section 19(a) to modify appendix C of Regulation X to incorporate the guidance provided by the HUD RESPA FAQs because, under the proposed rule, reverse mortgage transactions will continue to be disclosed using the RESPA GFE. The proposed revisions can be found in the instructions for the ''Summary of your loan'' and ''Escrow account information'' sections. The Bureau believes that these revisions 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.

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

The Bureau is proposing conforming amendments to § 1026.1 to reflect the fact that, under this proposal, Regulation Z implements not only TILA, but also certain provisions of RESPA. The details of the regulatory implementation of these statutory requirements are discussed below, under the applicable sections of Regulation Z. To reflect the expanded statutory scope of Regulation Z, the proposed conforming amendments revise § 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.

1(c) Coverage

As discussed in part V.B, the Bureau is proposing to exempt 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, until regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act take effect. 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). Proposed § 1026.1(c)(5) implements 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 explains 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 clarifies 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 clarifies that the exemption in proposed § 1026.1(c)(5) does not exempt any person from any other requirement of Regulation Z, Regulation X, or of TILA or RESPA. For the reasons discussed in part V.B, the Bureau is providing a comment period of 60 days for the proposed amendments to § 1026.1(c). In addition, as discussed above in part V.B, the Bureau requests comment on whether the exemptions provided in proposed § 1026.1(c)(5) should expire after a specified period of time.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(3) Application

Background

Neither TILA nor RESPA defines the term ''application.'' Although Regulation Z does not define this term, for the good faith estimate disclosures currently required by § 1026.19(a), Regulation Z incorporates the Regulation X definition. *See* comment 19(a)(1)(i)–3. 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). This definition, adopted as part of HUD's 2008 RESPA Final Rule, was intended to ensure that consumers received a RESPA GFE containing reliable estimates of settlement costs early in the process of shopping for a mortgage loan.

However, in response to concerns that a narrow definition of application might inhibit preliminary underwriting, the definition adopted by HUD includes seven elements, one of which is ''any other information deemed necessary by the loan originator.'' HUD added this ''catch-all'' element to enable creditors to collect any additional information deemed necessary to underwrite a loan.

Concerns With the Current Definition Under Regulation X

While the Bureau believes that creditors should be able to collect information in addition to the six elements, the Bureau is concerned that the seventh catch-all element may

permit creditors to delay providing consumers with the integrated Loan Estimate. 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. It is vital, however, that creditors be able to collect the information necessary to originate loans in a safe and sound manner. The Bureau does not believe that these principles conflict. The definition of application does not define or limit underwriting; it instead establishes a point in time at which disclosure obligations begin.

Based on this premise, the 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. Removing the catch-all element from the definition under Regulation X may ensure that the disclosures are received both early in the loan process and based on the information most critical to providing reliable estimates. Consumers would be able to receive the disclosures as soon as consumers provide creditors with the information needed for reliable estimation. 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), which are the consumer's name, income, and social security number to obtain a credit report, as well as the property address, an estimate of the value of the property, and the mortgage loan amount sought. For example, if a creditor believes that a reliable estimate cannot be provided without information related to the consumer's combined current liabilities, the creditor may collect this information, provided that it does so prior to, or at the same time as, collecting the six pieces of information specified in § 1026.2(a)(3)(ii). The Bureau acknowledges that creditors could strategically order information collection in a manner that best suits the needs of the creditor. Even if the creditor did so, the Bureau believes that the definition would enable the consumers to receive the disclosures early in the loan process. This approach may also ensure that consumers are not required to disclose sensitive information, such as the consumer's social security number or income, until after the creditor collects less sensitive information. Thus, removing the seventh catch-all element, while preserving creditors' ability to collect any additional necessary information, may strike the appropriate balance between the needs of consumers and the needs of industry.

This approach also dovetails with the requirements of proposed § 1026.19(e) establishing limitations on fee increases for the purposes of determining good faith, but which are subject to several exceptions, including exceptions based on the information the creditor relied on in disclosing the estimated loan costs. Thus, the proposed definition of application, by requiring creditors to collect any additional information prior to collecting the six pieces of information specified in § 1026.2(a)(3)(ii), maintains creditors' current flexibility in deciding which additional information is necessary for providing estimates. For example, 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. If the consumer's combined liabilities subsequently increase, the creditor may issue a revised disclosure reflecting the change in information relied upon in providing the original disclosure. If a different creditor chooses to rely on only the six pieces of information specified in § 1026.2(a)(3)(ii) in providing the disclosures, but during underwriting information related to the consumer's combined liabilities is discovered, and such information requires a revision in loan terms, the creditor may issue a revised disclosure reflecting such new information not previously relied on in providing the disclosures. But neither creditor may delay providing consumers with the disclosures in the first instance by claiming that additional information related to the consumer's combined liabilities is required after the consumer has provided the six pieces of information specified in § 1026.2(a)(3)(ii). Thus, removal of the seventh catch-all element may achieve the same outcome from the creditor's perspective as under the current Regulation X definition, while inhibiting the ability of creditors to delay providing consumers with the disclosures. This approach has the added benefit of being a uniform standard for disclosure obligations across all creditors, which facilitates compliance and supervision.

Accordingly, pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA, the Bureau is proposing to add § 1026.2(a)(3)(i) to define ''application'' as the submission of a consumer's financial information for the purposes of obtaining an extension of credit. Proposed § 1026.2(a)(3)(ii) provides that, except for purposes of subpart B, subpart F, and subpart G, the term consists of the consumer's name, income, and social security number to obtain a credit report, and the property address, an estimate of the value of the property, and the mortgage loan amount sought. For the reasons discussed above, removal of the seventh catch-all element from the definition of application may help carry out the purposes of TILA by promoting the informed use of credit and achieve the purposes of RESPA by promoting more effective advance disclosure of settlement costs by encouraging creditors to provide consumers with good faith estimates of loan terms and costs earlier in the process.

The Bureau has received feedback, including a comment received in response to the 2011 Streamlining Proposal, requesting a single definition of ''application'' under Regulation Z, Regulation B (which implements the Equal Credit Opportunity Act), and Regulation C (which implements the Home Mortgage Disclosure Act). The Bureau recognizes the potential consistency benefits of a single definition. However, for the reasons discussed above, the Bureau believes that the proposed definition provides important benefits to consumers in this context.

During the Small Business Panel Review process, several small entity representatives expressed concern about eliminating the seventh prong of 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 solicits 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. *See id.* at 29.

The proposed definition of application consists of two parts. The first part establishes a broad definition for all of Regulation Z. The second part provides that an application consists of six elements of data. These elements, which are currently set forth in the definition of application in Regulation X, have 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. Thus, these six elements

do not apply to 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).

Proposed comment 2(a)(3)–1 explains that a consumer's submission of financial information is for purposes of obtaining an extension of credit. A creditor is free to collect information in addition to that listed in § 1026.2(a)(3)(ii) that it deems necessary in connection with the request for the extension of credit. However, once a creditor has received the six listed pieces of information, it has an application for purposes of § 1026.2(a)(3). The proposed comment also contains illustrative examples of this provision.

Proposed comment 2(a)(3)–2 clarifies 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 example, 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. This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 7, #14 (''GFE—General'').

Proposed comment 2(a)(3)–3 clarifies that the creditor's receipt of a credit report fee does not affect whether an application has been received. Section 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). Section 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). 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). For example, if, in a transaction subject to § 1026.19(e)(1)(i), a creditor receives the six pieces of information identified under § 1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with § 1026.19(e)(1)(iii) if it provides the disclosures required under § 1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period beings on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.

2(a)(6) Business Day

Although neither RESPA nor TILA defines ''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, an alternative definition applies. Under this definition, ''business day'' means 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 alternative 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). As discussed below, the Bureau is proposing to amend § 1026.19 to implement the integrated disclosure requirement in section 1032(f) of the Dodd-Frank Act by adding new paragraphs (e) and (f). Accordingly, for consistency and to facilitate compliance with TILA, the Bureau is proposing to use its authority under TILA section 105(a) to amend § 1026.2(a)(6) to apply the alternative definition of business day to the provisions of paragraphs (e) and (f) that are analogous to § 1026.19(a)(1)(i), (a)(1)(ii), and (a)(2). The Bureau also proposes conforming amendments to comment 2(a)(6)–2.

The Bureau recognizes that this issue was previously raised during the Board's 2008–2009 MDIA rulemaking. *See* 73 FR 74989 at 74991 (Dec. 10, 2008) and 74 FR 23289 at 23293–23294 (May 19, 2009). However, the Bureau believes that applying the alternative definition of business day to the integrated disclosures would facilitate compliance. The Bureau solicits feedback regarding whether the general definition of business day instead should apply to the integrated disclosure delivery requirements. The Bureau also solicits comment on whether the rules should be analogous to the current rules, where the general business day requirement applies to some requirements and the alternative business day requirement applies to other requirements. Finally, the Bureau seeks 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).

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, is exempt from the definition of ''creditor.'' *See* § 1026.2(a)(17)(v). The Bureau's 2011 Streamlining Proposal specifically requested comment on whether these thresholds should be raised and, if so, to what number of transactions. In addition, the proposal solicited comment on whether a similar exemption should be applied to the pre-consummation disclosure requirements under RESPA that will be integrated with the TILA requirements pursuant to Dodd-Frank Act section 1032(f). In response, trade association commenters suggested raising the threshold number of transactions in order to reduce regulatory burden on more 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 requests comment on whether the five-loan exemption threshold is appropriate for transactions subject to this proposed rule and, if not, what number of transactions would be appropriate. The Bureau also solicits 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.

2(a)(25) Security Interest

Pursuant to its authority under TILA section 105(a), the Bureau proposes a conforming amendment to the definition of ''security interest'' in current § 1026.2(a)(25). Under the current definition of security interest, 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, the Bureau's proposed amendment extends that exemption to disclosures required under proposed §§ 1026.19(e) and (f) and 1026.38(l)(6). The same conforming amendment would be made to comment 2(a)(25)–2.

Section 1026.3 Exempt Transactions

The Bureau is proposing a partial exemption from the disclosure requirements of proposed § 1026.19(e), (f), and (g) for certain mortgage loans. The Bureau therefore is proposing conforming amendments to § 1026.3(h) to reflect this exemption. The Bureau is also proposing 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 is proposing to revise 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 proposal amends comment 3(a)–10 to extend this rationale to more common forms of trusts. Specifically, proposed comment 3(a)–10 notes 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. Under this proposal, revised comment 3(a)–10 states 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. Comment 3(a)–9 would be revised to cross-reference comment 3(a)–10.

3(h) Partial Exemption for Certain Mortgage Loans

The Bureau is proposing 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) establishes the requirement to provide the new integrated disclosures for transactions secured by real property, other than reverse mortgages, and proposed § 1026.19(g) establishes the requirement to provide a special information booklet for those transactions. The partial exemption in proposed § 1026.3(h) parallels § 1024.5(c)(3), discussed above. The exemptions are designed to create consistency with Regulation X and to codify a disclosure exemption previously granted by HUD. Thus, under the two proposed exemptions, lenders would be exempt from providing the RESPA-mandated closing cost disclosures for federally related mortgage loans that satisfy the exemption's conditions, even if the transaction otherwise would be subject to RESPA.

The Bureau proposes this exemption pursuant to its authority under 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). The Bureau believes that the proposed exemption will create consistency with Regulation X and therefore facilitate compliance with TILA and RESPA. In addition, the Bureau believes the special disclosure requirements that covered persons must meet to qualify for the proposed exemption will help ensure that the features of these 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 these mortgage transactions, consistent with Dodd-Frank Act section 1032(a). The proposed exemption will also improve 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 has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

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

Proposed comments provide additional guidance. Proposed comment 3(h)–1 notes that transactions that meet the requirements of § 1026.3(h) are exempt from only the integrated disclosure requirements and not from any other applicable requirement of Regulation Z. The comment further clarifies that § 1026.3(h)(6) requires 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 notes that the consumer also has the right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

Proposed comment 3(h)–2 explains that the 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 further clarifies that, although the other conditions need not be reflected in the credit contract, the creditor must retain evidence of compliance with those requirements, as required by § 1026.25(a). The Bureau

solicits comment on whether this exemption should be adopted in Regulation Z.

Section 1026.4 Finance Charge

TILA's Approach to the Finance Charge

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 contains numerous exceptions. 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. 15 U.S.C. 1605(b), (c); TILA section 106(b), (c). TILA also specifically excludes from the finance charge certain charges related to the perfecting of the 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. 15 U.S.C. 1605(d), (e); TILA section 106(d), (e). Such amounts would otherwise be included in the finance charge under the general definition.

Current Regulatory Approach to the Finance Charge

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 listed 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. Early concerns about the problems with this approach to the finance charge are outlined in the Board-HUD Joint Report. Board-HUD Joint Report at 10. 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. *Id.* 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. *Id.* However, the consumer views the cost of credit as what the consumer pays for the credit, regardless of the persons to whom such amounts are paid. *Id.* The current ''some fees in, some fees out'' approach to the finance charge largely reflects the creditor's perspective, not the consumer's.

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 usefulness of the APR 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, for closed-end credit transactions secured by real property or a dwelling, the Board's 2009 Closed-End Proposal would have replaced the ''some fees in, some fees out'' approach to the finance charge with a more inclusive approach to ensure that the finance charge and corresponding APR disclosed to consumers provides 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.

The Bureau's Proposal

For the reasons set forth in the Board's 2009 Closed-End Proposal, discussed above, proposed § 1026.4 revises the test for determining the finance charge. Except where otherwise noted, the Bureau's proposal generally mirrors the Board's 2009 Closed-End Proposal. 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 is proposing to amend § 1026.4 to replace the current ''some fees in, some fees out'' approach to the finance charge with a simpler, 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). The proposed changes to § 1026.4 apply to closed-end transactions secured by real property or a dwelling, and are not limited to transactions subject to proposed § 1026.19(e) and (f).

Under proposed § 1026.4, the current exclusions from the finance charge would be largely eliminated, for closed-end transactions secured by real property or a dwelling. Specifically, under the proposed test, a fee or charge is 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 continue to exclude fees or charges paid in comparable cash transactions. The proposed rule also retains a few narrow exclusions from the finance charge. As discussed below, proposed § 1026.4 continues to exclude from the finance charge late fees and similar default or delinquency charges, seller's points, amounts required to be paid into escrow accounts if the amounts would not otherwise be included in the finance charge, and premiums for property and liability insurance if certain conditions are met.

The Bureau proposes § 1026.4 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 has considered the purposes for which it may exercise its authority under TILA section 105(a) and, based on that review, believes that the proposed adjustments and exceptions are appropriate. The proposal would effectuate TILA's purpose by better informing consumers of the total cost of credit and prevent circumvention or evasion of the statute through the unbundling or shifting of the cost of credit from items that are included in the finance charge to fees or charges that are currently excluded from the finance charge. The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. A more inclusive approach to the finance charge may improve the process of mortgage lending by enhancing consumer understanding of the finance charge and APR, and will also reduce compliance costs. The Bureau does not believe that the proposed exemptions undermine the goal of consumer protection; rather they promote and are more consistent with the overall purposes of TILA. Based on that review, the Bureau believes that treating the fees that are currently exempt as part of the finance charge, for closed-end transactions secured by real property or a dwelling, is appropriate.

In addition, for the reasons set forth above, the proposed changes to the finance charge 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. Finally, for closed-end transactions secured by real property or a dwelling that are also residential mortgage loans as defined in TILA section 103(cc)(5), the Bureau proposes § 1026.4 pursuant to its authority under Dodd-Frank Act section 1405(b). For the reasons set forth above, including avoiding consumer confusion and preventing the unbundling of the cost of credit, the Bureau believes this proposed modification may improve consumer understanding, and therefore is in the interest of consumers and the public.

Industry feedback in response to the Bureau's Small Business Review Panel Outline raised concerns about the usefulness of the proposed expansion of the finance charge in light of the Bureau's proposal to deemphasize the finance charge and APR in the disclosures provided to consumers within three days of the consumers' application and prior to consummation, as discussed below in the section-by-section analysis for proposed §§ 1026.37(l) and 1026.38(o). The Bureau has considered this feedback in developing the proposed rule, but nevertheless believes that, in addition to benefiting industry by simplifying the finance charge and APR calculation, the proposed approach could provide important benefits to consumers in the form of an APR that better reflects the true cost of credit. The Bureau intends to develop supplemental educational materials to further explain how to use the finance charge and APR in comparing loan costs over the long term. Accordingly, the Bureau's proposal to remove exclusions from the finance charge is one of several ways the Bureau intends to improve the disclosure as a useful measure for consumers.

The Bureau recognizes that the proposed more inclusive finance charge could affect coverage under other laws, such as higher-priced mortgage loan and HOEPA protections, and that a more inclusive finance charge has implications for the HOEPA, Escrow, Appraisals, and Ability to Repay rulemakings identified in part II.F above. Absent further action by the Bureau, the more inclusive finance charge would:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans.[120] The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge would affect both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under Dodd-Frank will depend on comparisons to APOR) for defining what constitutes a high-cost loan.
- Cause more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien higher-priced mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Cause more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals for ''higher-risk'' mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduce the number of loans that would otherwise be ''qualified mortgages'' under the Dodd-Frank Act Ability to Repay requirements, given that qualified mortgages cannot have points and fees in excess of three percent of the loan amount. Also, more loans could be required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and could be ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed-rate, non-higher-priced qualified mortgage loans.[121] Again, status as a higher-priced mortgage loan depends on comparing APR to APOR.

During the Small Business Review Panel and in industry feedback provided in response to the Small Business Review Panel Outline, concerns were expressed that one unintended consequence of a more inclusive definition of finance charge could be that more loans would qualify as high-cost loans subject to additional requirements under TILA section 129 and under similar State laws. *See* Small Business Review Panel Report at 25. Industry feedback generally suggests that the proposed revisions to the

[120] Under 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 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 is that more loans might exceed HOEPA's points and fees threshold because new categories of charges would be 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 result in some additional loans being covered as high-cost mortgages because closed-end loans would have higher APRs. There are currently some differences between APR and the average prime offer rate, which is generally calculated using data that includes only contract interest rate and points but not other origination fees. *See* 75 FR 58660–58662. 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 also include most third-party charges, would widen the disparity between the APR and APOR and cause more closed-end loans to qualify as a high-cost mortgage. The Bureau notes that substantially similar implications would apply to each respective rulemaking in which coverage depends on comparing a transaction's APR to the applicable APOR. In addition, the Bureau notes 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 applies only to closed-end loans. Therefore, the Bureau notes that the more inclusive finance charge would not affect the potential coverage of open-end credit plans under HOEPA.

[121] Specifically, the Dodd-Frank Act generally prohibits prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed-rate qualified mortgages that are not higher-priced mortgage loans. For balloon loans, the Dodd-Frank Act generally requires 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. Only consumers with substantial income or assets would likely qualify for such a loan. A separate Dodd-Frank Act provision authorizing balloon loans made by creditors that operate predominantly in rural or underserved areas is not affected by the finance charge issue.

finance charge be viewed in the context of other rulemakings implementing the Dodd-Frank Act revisions to the thresholds for high-cost mortgages and qualified mortgage determinations, because of the relationship between the APR and those thresholds and because any changes to the APR calculation could be costly to implement and should be done in conjunction with other related changes.

Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau has considered the requirements of TILA section 129 (high-cost mortgages) and TILA section 129C (qualified mortgages), including the Dodd-Frank Act amendments to those provisions, as well as State predatory lending laws, in proposing the amendments to § 1026.4. For example, the Board previously proposed two means of reconciling an expanded definition of the finance charge with existing thresholds for loan APR and points and fees, and the Bureau expects to seek comment on potential trigger modifications in each proposal it issues as discussed below. The Bureau will consider any final or proposed rules implementing those provisions prior to issuing a final rule on this issue. *See* Small Business Review Panel Report at 30.

As described in the § 1022 analysis below, the Bureau is seeking data that will allow it to perform a quantitative analysis to determine the impacts of a broader finance charge definition on APR thresholds for HOEPA and various other regimes.[122] The Bureau seeks 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.

The Bureau is carefully weighing whether modifications may be warranted to the thresholds for particular regulatory regimes to approximate coverage levels under the current definition of finance charge. 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 current 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 believes that it is appropriate to explore alternatives to implementation of the expanded finance charge definition for purposes of coverage under HOEPA and other regulatory regimes.

For example, the Board previously proposed two means of reconciling an expanded definition of the finance charge with existing APR-based thresholds. On several occasions, the Board proposed to replace the APR with a ''transaction coverage rate'' as a transaction-specific metric a creditor compares to the average prime offer rate to determine whether the transaction meets the higher-priced loan threshold in § 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).[123] 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, both metrics would be simpler to compute than APR today using the current definition of finance charge.[124] In addition, the Board proposed to amend § 1026.32 to retain the existing treatment of certain charges in the definition of points and fees for purposes of determining HOEPA coverage. 75 FR at 58539, 58636–38 (Sept. 24, 2010). The Bureau has proposed language to adopt the transaction coverage rate and to exclude the additional charges from the HOEPA points and fees test in its 2012 HOEPA Proposal. The Bureau has proposed language to adopt the transaction coverage rate and to exclude the additional charges from the HOEPA points and fees test in its 2012 HOEPA Proposal. The Bureau seeks comment on these prior proposals and other potential methods of addressing the impact of a more inclusive approach to the finance charge on other regimes.

The Bureau also seeks 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 various regulatory regimes. With regard to the transaction coverage rate, the Bureau believes that the potential compliance burden is 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. However, the Bureau seeks comment on the issue generally and in particular 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 would prefer. The Board's 2010 Mortgage Proposal structured TCR as a mandatory requirement out of concern that identical transactions extended by two different creditors could have inconsistent coverage under regulations governing higher-priced mortgage loans, but similarly sought comment on the issue.

Finally, the Bureau also seeks comment on the timing of implementation. There is no statutory deadline for issuing final rules to integrate the mortgage disclosures under TILA and RESPA, and the Bureau expects that it may take some time to conduct quantitative testing of the forms prior to issuing final rules. However, the Bureau expects to issue several final rules to implement provisions of title XIV of the Dodd-Frank Act by January 21, 2013, that address thresholds for compliance with various substantive requirements under HOEPA and other Dodd-Frank Act provisions. In some cases the Dodd-Frank Act requires that regulations implementing title XIV take effect within one year of issuance.

The Bureau believes that it would be preferable to make any change to the definition of finance charge and any related adjustments in regulatory triggers take effect at the same time, in order to provide for consistency and efficient systems modification. The Bureau also believes that it may be advantageous to consumers and creditors to make any such changes at

[122] In its 2009 Closed-End Proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains 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 are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded. The Bureau is considering the 2010 version of that survey, but as described below the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

[123] The transaction coverage rate would be determined in accordance with the applicable rules of Regulation Z for the calculation of the annual percentage rate 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 wording of the Board's proposed definition of ''transaction coverage rate'' 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 proposes to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates. The Bureau believes that this approach is consistent with the rationale articulated by the Board in its earlier proposals and with certain other parts of the Dodd-Frank Act that distinguish between charges retained by the creditor, mortgage broker, or affiliates of either company. See, *e.g.,* Dodd-Frank Act sections 1403, 1411(a).

[124] To the extent that lenders believe that it is burdensome to calculate two metrics, they could continue to use APR for both purposes.

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 this rulemaking relating to disclosures. If the Bureau expands the definition of finance charge, this approach would likely provide the benefits to consumers 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 this proposal will also require systems and procedures changes, there may be advantages to delaying any change in the definition of finance charge and any related adjustments to regulatory triggers until those changes occur. The Bureau therefore seeks comment on whether to sequence any change in the proposal considering the benefits and costs to both consumers and industry of both approaches.

In light of these implementation issues, the Bureau wishes to evaluate comments on the cumulative effect of an expanded definition of the finance charge simultaneously with comments on the rules to implement title XIV. The Bureau therefore is providing a comment period of 60 days for the proposed amendments to § 1026.4, rather than the 120-day comment period provided for all other aspects of this proposed rule other than § 1026.1(c). The Bureau believes a shorter comment period is particularly appropriate given that this aspect of the proposal largely mirrors the proposed changes to § 1026.4 in the Board's 2009 Closed-End Proposal.

4(a) Definition

Section 1026.4 states the basic test for the finance charge, as set forth in TILA section 106(a), and specifies that it does not include types of charges payable in a comparable cash transaction. Consistent with the Board's 2009 Closed-End Proposal, the Bureau is proposing new comment 4(a)–6 to clarify that, in a transaction where there is no seller, such as a refinancing of an existing extension of credit described in § 1026.20(a), there is no comparable cash transaction and, therefore, the exclusion from the finance charge in proposed § 1026.4(a) for types of charges payable in a comparable cash transaction does not apply to such transactions. The Bureau solicits comment on this proposed clarification.

4(a)(2) Special Rule; Closing Agent Charges

Section 1026.4(a)(2) provides a special rule for the treatment of closing agent charges in determining the finance charge. That section excludes from the finance charge fees charged by a third party that conducts a loan closing unless the creditor (1) requires the particular service for which the consumer is charged; (2) requires the imposition of the charge; or (3) retains a portion of the third-party charge. Under proposed § 1026.4(a)(2), this exclusion is inapplicable to closed-end transactions secured by real property or a dwelling. Under the basic test for the finance charge in TILA section 106(a), many closing agent charges described in § 1026.4(a)(2) would typically be part of the finance charge because creditors generally require closing agents to conduct closings who, in turn, impose various fees on the consumer. As the Board described in its 2009 Closed-End Proposal, in some cases, the creditor clearly requires the particular fee charged by the closing agent but that, in other cases, it is not clear whether a charge is specifically required by the creditor. A case-by-case determination as to whether the creditor requires the particular service charged by a closing agent would result in significant burden and risk for consumers and, likely, inconsistent treatment of such fees, which would undermine the purpose of disclosing the finance charge to consumers. 74 FR at 43246. For these reasons, proposed § 1026.4(a)(2) adopts a bright-line rule that includes in the finance charge fees charged by closing agents, including fees of other third parties hired by closing agents to perform particular services, assuming those fees meet the general definition of finance charge and that no other exclusion applies. Proposed comment 4(a)(2)–3 clarifies that comments 4(a)(2)–1 and 4(a)(2)–2 do not apply to closed-end transactions secured by real property or a dwelling.

As the Board noted in its 2009 Closed-End Proposal, the inclusion of third-party charges in the finance charge may create some risk that creditors will understate the finance charge if the creditor does not know that a charge is imposed by a third party or the particular amount of such charge. 74 FR at 43246. Some industry commenters in response to the 2009 Closed-End Proposal supported the inclusion of all closing agent charges in the finance charge as a means of simplifying compliance. Other industry commenters opposed the inclusion of all closing agent charges in the finance charge due to the creditor's lack of control over these charges, and also because including these amounts in the finance charge makes creditors responsible for settlement fees under TILA. The Bureau has considered these comments in developing the proposed rule, but believes that a determination of whether a creditor requires the particular service for which the consumer is charged results in significant confusion for consumers and inconsistent treatment of such fees. In addition, as discussed below, the Dodd-Frank Act added to TILA a requirement that creditors disclose aggregate settlement charges, so that creditors now have a statutory disclosure responsibility for such charges under TILA. Furthermore, creditors are responsible for disclosing settlement charges subject to certain estimation requirements and limitations on increases in settlement costs pursuant to HUD's 2008 RESPA Final Rule and proposed § 1026.19(e), discussed below. The Bureau also notes that the risk of understating the finance charge is lessened by TILA section 106(f), 15 U.S.C. 1605(f), current § 1026.18(d)(1), and proposed § 1026.38(o)(2), which provide that a disclosed finance charge is treated as accurate if it does not vary from the actual finance charge by more than $100 or is greater than the amount required to be disclosed. The Bureau requests comment on the extent to which settlement costs increase from the good faith estimate to closing and whether the Bureau should increase the finance charge tolerance for closed-end transactions secured by real property or a dwelling in light of the proposal to include third-party charges in the finance charge, and the amount of any such increase.

In addition, the Board's 2009 Closed-End Proposal stated that excluding certain fees from the finance charge because they are voluntary or optional is inconsistent with the statutory objective of disclosing the ''cost of credit,'' including charges imposed ''as an incident to the extension of credit.'' 74 FR at 43246. As the Board noted, an assumption underlying the exclusion from the finance charge for certain voluntary or optional charges is that they are not ''imposed directly or indirectly by the creditor.'' *Id.* However, some charges may be imposed by the creditor even if the services for which the fee is imposed are not specifically required by the creditor. *Id.* For example, a creditor may require the use of a closing agent, but may not impose or require certain fees or services imposed by that closing agent for which

the consumer is charged, such as administration fees for voluntary escrow accounts. Excluding such charges from the finance charge conflicts with the statutory purpose of including charges that are imposed ''as an incident to the extension of credit.''

The Board historically interpreted the definition of ''finance charge'' as not dependent on whether a charge is voluntary or required. *See, e.g.,* 61 FR 49237, 49239 (Sept. 19, 1996) (''The Board has generally taken a case by case approach in determining whether particular fees are 'finance charges' and does not interpret Regulation Z to automatically exclude all 'voluntary' charges from the finance charge.''). This approach is reflected in current Regulation Z's treatment of voluntary credit insurance premiums and debt cancellation fees, which are by definition voluntary, as excluded from the finance charge only under certain circumstances. This special rule presupposes that voluntary credit insurance and debt cancellation charges would be included in the finance charge under the general definition.

Furthermore, excluding certain fees from the finance charge because they are voluntary or optional requires a factual determination, which is not practical in all cases since it may be difficult to determine whether a fee or charge is truly voluntary. The Board's 2009 Closed-End Proposal cited the current provisions addressing whether a charge for credit insurance is optional as an example of an approach to defining a voluntariness test that has proven unsatisfactory. *Id.* For this reason, the Bureau proposes a bright-line rule to include in the finance charge both voluntary and required charges that are imposed by the creditor to avoid fact-based analysis and improve consistency in disclosure of the finance charge and APR.

The Board cited as another basis for the current exclusions from the finance charge the assumption that creditors cannot know the amounts of voluntary or optional charges at the time the finance charge and APR disclosures must be provided to consumers. *Id.* However, like the Board, the Bureau believes that creditors know the amounts of their own voluntary charges, if any, and that creditors know or can readily determine voluntary charges when disclosing the finance charge and APR to consumers at least three business days prior to consummation. As a practical matter, most voluntary fees would be excluded from the finance charge because they are also payable in a comparable cash transaction (*e.g.,* home warranty fees). The Board cited voluntary credit insurance premiums as the primary voluntary third-party charge in connection with a mortgage transaction that is not otherwise excluded from the finance charge, noting that creditors generally solicit consumers for this insurance and that, historically, creditors had to disclose the premium for voluntary credit insurance to exclude such amounts from the finance charge. However, the Bureau solicits comment on whether there are voluntary third-party charges that would be included in the finance charge under the proposed more-inclusive approach the amounts of which cannot be determined three business days before consummation.

The Bureau also recognizes that, within three business days of receiving the consumer's application, creditors may not know what voluntary or optional charges the consumer will incur. Regulation Z generally permits creditors to rely on reasonable assumptions regarding voluntary or optional charges and label those disclosures as estimates pursuant to § 1026.17(c) and its commentary. The Bureau requests comment on whether further guidance is required regarding reasonable assumptions for the voluntary or optional charges.

4(b) Examples of Finance Charges

The Bureau proposes to amend comment 4(b)-1 to be consistent with proposed § 1026.4(g), which provides that the exclusions from the finance charge under § 1026.4(a)(2) and (c) through (e), other than § 1026.4(c)(2), (c)(5), (c)(7)(v), and (d)(2), do not apply to closed-end transactions secured by real property or a dwelling, as discussed below.

4(c) Charges Excluded From the Finance Charge

The Bureau proposes to amend § 1026.4(c), which lists specific exclusions from the finance charge, to be consistent with proposed § 1026.4(g). Pursuant to proposed § 1026.4(g), the exclusions in § 1026.4(c), other than the exclusion for late fees, exceeding a credit limit, and default, delinquency, or similar charges, seller's points, and escrowed items that are otherwise not included in the finance charge, would not apply to closed-end transactions secured by real property or a dwelling. The Bureau also proposes to amend the commentary to § 1026.4(c) to be consistent with § 1026.4(g).

4(c)(2)

The Bureau proposes to retain the exclusion from the finance charge under § 1026.4(c)(2) of fees for actual unanticipated late payment, exceeding a credit limit, or for delinquency, default, or a similar occurrence. Although the Bureau is generally proposing a more inclusive approach to the finance charge through proposed § 1026.4, the charges described in § 1026.4(c)(2) should be excluded from the finance charge because they are incurred, if at all, only after consummation of the transaction. At the time a creditor must disclose the finance charge and other items affected by the finance charge, the creditor cannot know whether or how many times such charges may be imposed.

4(c)(5)

The Bureau proposes to retain the exclusion from the finance charge under § 1026.4(c)(5) of seller's points. Seller's points include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. Although the Bureau is generally proposing a more inclusive approach to the finance charge, the Bureau believes that it is appropriate to continue to exclude seller's points from the finance charge because seller's points are not payable by the consumer and because the extent to which seller's points are passed on to the consumer in the form of a higher sales price is unknown. However, the Bureau requests comment on whether seller's points should be included in the finance charge for closed-end transactions secured by real property or a dwelling. In particular, the Bureau requests comment on the frequency with which seller's points are passed on to the borrower through a higher sales price. In addition, although the scope of the changes to § 1026.4 under this proposal is limited to closed-end transactions secured by real property or a dwelling, the Bureau solicits comment on the potential ramifications of including seller's points in the finance charge for other types of credit.

4(c)(7) Real-Estate Related Fees

Section 106(e) of TILA, 15 U.S.C. 1605(e), excludes certain charges from the finance charge for credit secured by an interest in real property. This provision is implemented in current § 1026.4(c)(7), which contains exclusions from the finance charge that generally mirror the statute, for transactions secured by real property or in residential mortgage transactions, provided that the fees for such charges are bona fide and reasonable in amount. Specifically, § 1026.4(c)(7) excludes from the finance charge those fees for: title examination, abstract of title, title insurance, property survey, and similar

purposes; preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents; notary and credit report fees; property appraisal or inspections to assess the value or condition of the property prior to closing, including pest-infestation or flood-hazard determination; and amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge. These fees fall squarely within the general statutory definition of the finance charge, and their exclusion from the finance charge significantly undermines the purpose of the finance charge as a reflection of the cost of credit since the charges comprise a significant portion of the up-front costs paid by consumers. As noted by some industry commenters to the 2009 Closed-End Proposal, the inclusion of real-estate related fees such as application, appraisal, and credit report fees in the finance would reduce the possibility that a creditor can manipulate the APR by shifting some costs of credit to fees that are currently excluded from the finance charge. Some commenters also noted that these charges are generally known to the creditor early in the loan process. Accordingly, proposed § 1026.4 includes these charges in the finance charge.

However, proposed § 1026.4 retains the exclusion from the finance charge in current § 1026.4(c)(7)(v) for amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge. For example, homeowner's insurance premiums that are excluded from the finance charge pursuant to § 1026.4(d)(2) would not be included in the finance charge simply because such premiums will be paid into an escrow account.

Under the Board's 2009 Closed-End Proposal, § 1026.4(c)(7) would have applied only to open-end credit plans secured by real property or open-end residential mortgage transactions. Some commenters interpreted that proposal to mean that amounts required to be paid into escrow or trustee accounts should be included in the finance charge calculation, even if such amounts would not otherwise be included in the finance charge if not paid into an escrow or trustee account. Concerns about including escrowed taxes and insurance in the finance charge were raised during the Small Business Review Panel (*see* Small Business Review Panel Report at 30), in industry feedback provided in response to the Small Business Review Panel Outline, and in comment letters provided to the Board in response to the 2009 Closed-End Proposal. The Small Business Review Panel specifically recommended that escrowed taxes and insurance remain excluded from the finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. Small Business Review Panel Report at 30. Commenters to the 2009 Closed-End Proposal noted that including escrowed taxes and insurance in the finance charge while excluding those paid outside of escrow may mislead consumers who try to compare escrowed and non-escrowed loans. Commenters also noted that the APR for identical loans could be vastly different because the escrow deposit is calculated based on the date the loan closes and when the next tax payment is due. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau is proposing to exclude escrowed taxes and insurance from the finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. In short, a fee or charge that is not part of the finance charge does not become part of the finance charge merely because it is paid to an escrow account.

Accordingly, proposed comment 4(c)(7)–1 clarifies that the exclusion of escrowed amounts under § 1026.4(c)(7)(v) applies to all residential mortgage transactions and to other transactions secured by real estate. The Bureau also proposes other amendments to the commentary to § 1026.4(c)(7) to be consistent with proposed § 1026.4(g).

4(d) Insurance and Debt Cancellation and Debt Suspension Coverage

The Bureau proposes to amend § 1026.4(d), which currently excludes from the finance charge, under certain circumstances, voluntary credit insurance premiums, property insurance premiums, and voluntary debt cancellation or debt suspension fees. Consistent with proposed § 1026.4(g), proposed § 1026.4(d) would not exclude from the finance charge credit insurance premiums and debt cancellation or debt suspension fees, for closed-end mortgage transactions. The Bureau also proposes to amend the commentary to § 1026.4(d) to be consistent with § 1026.4(g).

4(d)(1) Voluntary Credit Insurance Premiums

4(d)(3) Voluntary Debt Cancellation or Debt Suspension Fees

TILA section 106(b)(7), 15 U.S.C. 1605(b)(7), provides that premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction are part of the finance charge unless (1) the coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer; and (2) to obtain the insurance, the consumer specifically requests the insurance after getting the disclosures. Current § 1026.4(d)(1) and (d)(3) implement this provision by providing that the creditor may exclude from the finance charge any premium for credit life, accident, health or loss-of-income insurance; any charge or premium paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation; or any charge or premium for debt cancellation or debt suspension coverage in the event of loss of life, health, or income or in case of accident, whether or not the coverage is insurance, if (1) the insurance or coverage is not required by the creditor and the creditor discloses this fact in writing, (2) the creditor discloses the premium or charge for the initial term of the insurance or coverage, (3) the creditor discloses the term of insurance or coverage, if the term is less than the term of the credit transaction, and (4) the consumer signs or initials an affirmative written request for the insurance or coverage after receiving the required disclosures. In addition, under § 1026.4(d)(3)(iii), the creditor must disclose, for debt suspension coverage, the fact that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

Proposed § 1026.4(d)(1) and (3) includes credit insurance and debt cancellation charges in the finance charge for closed-end transactions secured by real property or a dwelling to be consistent with § 1026.4(g). Proposed § 1026.4(d) is consistent with the overall proposed changes to § 1026.4, which remove exclusions from the finance charge, to make the finance charge and APR more accurately reflect the cost of credit. As discussed above, the Bureau does not believe that a rule that excludes fees from the finance charge simply because they are ''voluntary'' is consistent with the statute, which says that the finance charge include charges ''imposed as an incident to the extension of credit,'' and that a determination of whether a fee is, in fact, voluntary simply has not been effective. As discussed above and as the Board noted in its 2009 Closed-End Proposal, the current test for defining

whether a charge for credit insurance and debt cancellation or suspension coverage is ''voluntary'' has proven unsatisfactory. *See* 74 FR at 43246–50. Instead, the Bureau proposes a bright-line rule to include in the finance charge premiums for credit insurance and debt suspension fees. The Bureau also proposes to amend the commentary to § 1026.4(d) to be consistent with § 1026.4(g).

Concerns were raised in industry feedback in response to the Small Business Review Panel Outline and in comment letters in response to the 2009 Closed-End Proposal that voluntary charges such as credit insurance and debt cancellation fees should not be part of the finance charge because they are not ''imposed'' by the creditor. Commenters to the 2009 Closed-End Proposal also noted that the products are often sold after consummation of the transaction and that including fees for these products in the finance charge may confuse consumers into believing they are mandatory. The Bureau has considered this feedback in developing the proposed rule, but, as discussed above, believes that whether or not a fee is ''voluntary'' is not determinative of whether it is imposed as an ''incident to the extension of credit.'' Concerns that consumers might mistake voluntary charges for mandatory ones due to their inclusion in the finance charge are mitigated by the fact that (1) the TILA disclosures do not itemize the components of the finance charge or APR, and (2) for transactions secured by real property other than reverse mortgages, creditors must indicate that voluntary credit insurance or debt suspension, or cancellation fees are ''optional'' on the Loan Estimate provided to consumers within three business days of application and the Closing Disclosure provided three business days before consummation pursuant to proposed § 1026.37(g)(4)(ii). Furthermore, existing commentary makes clear that credit insurance and debt cancellation and suspension products requested by the consumer after consummation are not considered written in connection with the credit transaction and therefore do not meet the basic test for inclusion in the finance charge. *See* comments 4(b)(7) and (b)(8)–2 and 4(b)(1)–2.

4(d)(2) Property Insurance Premiums

Section 106(c) of TILA, 15 U.S.C. 1605(c), provides that premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, should be included in the finance charge unless the creditor provides the consumer with a clear written statement that discloses the cost of such insurance if obtained from or through the creditor, and informs the consumer that he may choose his own insurance provider. Current § 1026.4(d)(2) implements TILA section 106(c), and generally provides that such premiums may be excluded from the finance charge if (1) the insurance may be obtained from a person of the consumer's choice, and that fact is disclosed to the consumer, and (2) if the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage is disclosed.

The Bureau proposes to retain the current exclusion from the finance charge under § 1026.4(d)(2) for premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property. As the Board noted in its 2009 Closed-End Proposal, property insurance is generally a hybrid product that protects both the value of the creditor's collateral and the consumer's equity in the property, such that it is impossible to segregate the premium into the portion that protects the creditor and the portion that protects the consumer. 74 FR at 43250. Although creditors generally require property insurance as a condition to extending credit secured by real property or a dwelling, consumers who do not have mortgages also regularly purchase property insurance to protect themselves from the risk of loss of or damage to property. *Id.* For these reasons, the Bureau proposes to retain the current exclusion from the finance charge under § 1026.4(d)(2).

The Bureau proposes to revise comment 4(d)–8 to conform it to the statutory language providing that, to be excluded from the finance charge, premiums for property insurance obtained ''from *or through* the creditor'' must be disclosed to the consumer. 15 U.S.C. 1605(c). Current § 1026.4(d)(2) also provides that if coverage is obtained ''from or through the creditor,'' the premium for the initial term must be disclosed. However, current comment 4(d)-8 states, in relevant part, that ''[t]he premium or charge must be disclosed only if the consumer elects to purchase the insurance *from the creditor;* in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.'' (Emphasis added.) Accordingly, the Bureau proposes to amend comment 4(d)–8 to conform to the statutory language. In addition, proposed § 1026.4(d)(2) and comment 4(d)–8 clarify that insurance is available ''from or through a creditor'' only if it is available from the creditor or the creditor's ''affiliate,'' as that term is defined under the Bank Holding Company Act, 12 U.S.C. 1841(k). The Bank Holding Company Act defines an ''affiliate'' as ''any company that controls, is controlled by, or is under common control with another company.'' Thus, if the consumer elects to purchase property insurance from a company that controls, is controlled by, or is under common control with the creditor, then the creditor is required to disclose the cost of the insurance and its term, if it is less than the term of the obligation, for the charge to be excluded from the finance charge.

4(e) Certain Security Interest Charges

TILA section 106(d), 15 U.S.C. 1605(d), provides exclusions from the finance charge for certain government recording taxes and related fees and the premiums for any insurance in lieu of perfecting a security interest, provided those amounts are disclosed to the consumer. This provision is implemented in current § 1026.4(e). Consistent with the overall approach to largely eliminate the specific exclusions from the finance charge for closed-end transactions secured by real property or a dwelling, the Bureau proposes to amend § 1026.4(e) to eliminate those exclusions, consistent with proposed § 1026.4(g). The Bureau believes this approach will better inform consumers of the total cost of credit and prevent circumvention or evasion of the statute through the unbundling of the cost of credit to fees or charges that are currently excluded from the finance charge. The Bureau also proposes to amend the commentary to § 1026.4(e) to be consistent with § 1026.4(g).

4(g) Special Rule for Closed-End Mortgage Transactions

The Bureau proposes new § 1026.4(g), which treats certain fees as part of the finance charge, for closed-end transactions secured by real property or a dwelling. Specifically, proposed § 1026.4(g) provides that the exclusions from the finance charge in § 1026.4(a)(2) (closing agent charges) and (c) (fees for actual unanticipated late payment, exceeding a credit limit, or for delinquency, default, or similar occurrence), (d) (premiums for credit insurance and debt cancellation coverage), and (e) (certain security-interest charges), other than § 1026.4(c)(2) (late, over-limit, delinquency, default, and similar fees), (5) (seller's points), (7)(v) (escrowed items that are not included in the finance charge), and (d)(2) (property and

liability insurance premiums), do not apply to closed-end transactions secured by real property or a dwelling.

As discussed above, the Bureau proposes to retain the exclusion from the finance charge for late, over-limit, delinquency, default and similar fees in § 1026.4(c)(2), seller's points described in § 1026.4(c)(5), amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge described in § 1026.4(c)(7)(v), and property and liability insurance described in § 1026.4(d)(2).

Proposed comments 1026.4(g)–1 through –3 provide guidance to creditors on compliance with the special rule for closed-end mortgage transactions provided in proposed § 1026.4(g). Proposed comment 4(g)–1 clarifies that the commentary under the exclusions identified above no longer applies to closed-end credit transactions secured by real property or a dwelling. Proposed comment 4(g)–2 clarifies that third-party charges that meet the definition under § 1026.4(a) and are not otherwise excluded from the finance charge generally are included in the finance charge, whether or not the creditor requires the services for which they are imposed. Proposed comment 4(g)–3 clarifies that charges payable in a comparable cash transaction, such as property taxes and fees or taxes imposed to record the deed evidencing transfer of title to the property from the seller to the buyer, are not part of the finance charge because they would have to be paid even if no credit were extended to finance the purchase.

Section 1026.17 General Disclosure Requirements

The Bureau is proposing conforming amendments to current § 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.

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 proposes to revise § 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 is implementing the grouping and segregation requirements of TILA section 128(b)(1) in proposed §§ 1026.37(o) and 1026.38(t). Further, for the reasons set forth in the section-by-section analysis to proposed §§ 1026.37(l)(3) and 1026.38(o)(2) and (4), the Bureau proposes 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) and(f). Proposed comment 17–1 states that, for the disclosures required by proposed § 1026.19(e), (f), and (g), rules regarding the disclosures' form are found in proposed §§ 1026.19(g), 1026.37(o), and 1026.38(t). In addition, proposed comment 17(a)(1)–7 reflects the special disclosure rules for transactions subject to § 1026.18(g) or (s).

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 is proposing special timing rules for the disclosures required by proposed § 1026.19(e), (f), and (g) in those provisions. Proposed § 1026.17(b) reflects 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 states that, for to the disclosures required by § 1026.19(e), (f), and (g), rules regarding timing are found in those sections.

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 to proposed §§ 1026.37 and 1026.38, the Bureau is proposing 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 lender. Accordingly, the Bureau is proposing 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 clarify 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 extend 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 proposes amendments to the commentary to § 1026.17(c)(1) to address areas of industry uncertainty regarding TILA disclosures. First, the Bureau proposes 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 proposes 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 is proposing 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 also proposes 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 at 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 buy-downs 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 at 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. 2009 Closed-End Proposal, 74 FR at 43417 (proposed comment 38(e)(5)(iii)–2).

The Bureau agrees with the Board's reasoning in proposing the foregoing 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 notes, 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 APR, 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 is proposing to place the guidance in the commentary to § 1026.17(c)(1), as that section is the basis for the underlying principal that the impact of premiums and rebates depends on the terms of the legal obligation.

17(c)(2)

Current § 1026.17(c)(2) and its commentary contain general rules regarding the use of estimates. The Bureau proposes 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 provides guidance to creditors on the basis for estimates. The proposed rule amends 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 revises 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 in 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 revises 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 clarifies 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, provides 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).

17(c)(4)

The proposed rule revises 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.

17(c)(5)

Current § 1026.17(c)(5) and its commentary contain general rules regarding the disclosure of demand obligations. The proposed rule revises comment 17(c)(5)–2, which addresses obligations whose maturity date is determined by a future event, to reflect the fact that special rules apply to the disclosures required by § 1026.19(e) and (f). In addition, the proposal revises 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 revises comment 17(c)(5)–4, regarding balloon payment mortgages, to reflect the fact that special rules apply to the disclosure of balloon payments in the projected payments tables required by §§ 1026.37(c) and 1026.38(c).

17(d) Multiple Creditors; Multiple Consumers

Current § 1026.17(d) addresses transactions that involve multiple creditors or consumers. The proposed rule revises 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, must be given before consummation to each consumer who has the right to rescind, including any such consumer who is not an obligor. As the Board stated in its 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 at 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 requires 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.

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 revises comment 17(e)–1 to clarify that special rules apply to transactions subject to proposed § 1026.19(e) and (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 analysis to proposed § 1026.19(a), (e), and (f), special timing requirements apply for transactions subject to those sections. Accordingly, § 1026.17(f) is revised to reflect the fact that the general early disclosure rules in § 1026.17(f) are subject to the special rules in § 1026.19(a), (e), and (f). In addition, comments 17(f)–1 through –4 would be revised to conform to the special timing requirements under proposed § 1026.19(a) or (e) and (f).

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 analysis to proposed § 1026.19(a), (e), and (f), the Bureau proposes special timing requirements for transactions subject to those provisions. Accordingly, the Bureau proposes 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), (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 analysis to proposed § 1026.19(a), (e), and (f), the Bureau proposes special timing requirements for transactions subject to those provisions. Accordingly, the Bureau proposes 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) and (f).

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 is proposing 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). Accordingly, the Bureau is proposing to amend § 1026.18's introductory language to provide that its disclosure content requirements apply only to closed-end transactions other than mortgage transactions subject to § 1026.19(e) and (f).

The Bureau is also proposing revisions to § 1026.18(k), which provides for disclosure of whether, if the obligation is prepaid in full, a penalty will be imposed or a consumer will be entitled to a rebate of any finance charge. The proposed revisions conform to the definition of ''prepayment penalty'' in proposed § 1026.37(b)(4) and associated commentary. As explained in more detail in the section-by-section analysis for proposed § 1026.37(b)(4), the Bureau is coordinating the definition of ''prepayment penalty'' across its pending mortgage-related rulemakings, and proposed revisions to § 1026.18(k) are part of that comprehensive approach.

The Bureau also is proposing to add a new comment 18–3 clarifying that, because of the exclusion of transactions subject to § 1026.19(e) and (f), the disclosures required by § 1026.18 apply 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 would also clarify 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 at 58482–84. Finally, the comment would clarify that, because § 1026.18 does not apply 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 not a dwelling and reverse mortgages, as applicable.

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 § 1026.17(c)(1), above, the Bureau is proposing to remove comment 18(b)–2 and place revised guidance regarding rebates and loan premiums in proposed comment 17(c)(1)–19.

18(b)(2)

The Bureau is proposing 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 more fully under proposed § 1026.4, above, the Bureau proposes to adopt a simpler and more inclusive definition of the finance charge. Therefore, references to real estate settlement charges in comment 18(b)(2)–1 are inappropriate. Proposed comment 18(b)(2)–1 removes those references and substitutes appropriate examples.

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 proposes certain conforming amendments to two comments under § 1026.18(c). Under this proposal, § 1026.18 disclosures, including the itemization of amount financed under § 1026.18(c), are 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 are subject instead to the disclosure content required by §§ 1026.37 and 1026.38. The Bureau therefore proposes 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.

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 proposes 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 is intended solely as a conforming amendment, to reflect the fact that multiple-advance construction loans would no longer be subject to the § 1026.18 disclosure requirements under this proposal. The Bureau believes 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. Therefore, all construction loans would be subject instead to the new disclosure content requirements of §§ 1026.37 and 1026.38. The Bureau seeks comment, however, on whether any reason remains to preserve comment 18(f)(1)(iv)–2.iii.

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 is proposing to remove from the coverage of § 1026.18 transactions secured by real property, other than reverse mortgages, and subject them to the integrated disclosures under §§ 1026.37 and 1026.38. Thus, under this proposal, § 1026.18(g) applies 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, are 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 changes to the coverage of § 1026.18 generally, and specifically § 1026.18(g), the Bureau is proposing several conforming changes to the commentary under § 1026.18(g). Specifically, comment 18(g)–4 would be revised to remove a reference to home repairs, and comment 18(g)–5, relating to mortgage insurance, would be removed and reserved. In addition, comment 18(g)–6, which currently discusses the coverage of mortgage transactions as between §§ 1026.18(g) and 1026.18(s), would be revised to reflect the additional effect of proposed § 1026.19(e) and (f), which requires the new integrated disclosures set forth in proposed §§ 1026.37 and 1026.38 for most transactions secured by real property. Finally, the Bureau also proposes to amend comments 18(g)(2)–1 and –2 to remove unnecessary, and potentially confusing, references to mortgages and mortgage insurance.

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 for proposed § 1026.37(b)(4), below.

The Bureau defines ''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 balance is due, and provides examples of prepayment penalties and other relevant guidance in proposed commentary. 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 proposing that definition are in the section-by-section analysis for proposed § 1026.37(b)(4), below.

As discussed in the section-by-section analysis for proposed § 1026.37(b)(4), the Bureau is coordinating the definition of ''prepayment penalty'' in proposed § 1026.37(b)(4) with the definitions in the Bureau's other pending rulemakings under the Dodd-Frank Act concerning ability-to-repay requirements, high-cost mortgages under HOEPA, and mortgage servicing. The Bureau believes 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 is proposing certain conforming revisions to § 1026.18(k) and associated commentary.

The Bureau recognizes that, with such conforming revisions to § 1026.18(k) and associated commentary, the revised definition of ''prepayment penalty'' will apply to both closed-end mortgage and non-mortgage transactions. In particular, the proposed conforming revisions to § 1026.18(k) define ''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.'' This revision may lead to an expansion of the set of instances that trigger disclosure under § 1026.18 of a

prepayment penalty for closed-end transactions. The Bureau believes that consumers entering into closed-end mortgage and non-mortgage transactions alike will benefit from the transparency associated with more frequent and consistent disclosure of prepayment penalties. Therefore, the Bureau is using its authority under TILA section 105(a) to make the proposed conforming revisions to § 1026.18(k) because they will effectuate the purposes of TILA by promoting the informed use of credit. Similarly, these revisions will help 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 revisions will also 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 solicits 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) deletes the phrase ''a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full'' and replaces 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) adds 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 insert 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 replaces the existing commentary text with the language from proposed comments 37(b)(4)–2 and –3. For further background on proposed comments 37(b)(4)–2 and –3, see the section-by-section analysis for proposed § 1026.37(b)(4), below.

18(r) Required Deposit

If a creditor requires the consumer to maintain a deposit as a condition of the specific transactions, § 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 is proposing 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 changes to the coverage of § 1026.18 under this proposal, the only transactions to which this guidance could apply are reverse mortgages, which do not entail escrow accounts for condominium fees or any other recurring expenses. Accordingly, the Bureau believes that comment 18(r)–6.vi is rendered unnecessary by this proposal. The Bureau seeks comment, however, on whether any kind of transaction exists for which this guidance would continue to be relevant under § 1026.18, as amended by this proposal.

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 this proposal, however, § 1026.19(e) and (f) requires new, separate disclosures for transactions secured by real property, other than reverse mortgages. Generally, the disclosure requirements of § 1026.19(e) and (f) apply to transactions currently subject to current § 1026.18(s), except that reverse mortgages and transactions secured by dwellings that are personal property would be excluded. In addition, as discussed in the section-by-section analysis to proposed § 1026.19, transactions secured by a consumer's interest in a timeshare plan are 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 include a different form of projected payments table, under §§ 1026.37(c) and 1026.38(c), instead of the summary table under § 1026.18(s). Accordingly, the Bureau proposes to amend § 1026.18(s) to provide that it applies 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 is proposing parallel revisions to comment 18(s)–1 to reflect this change in the scope of § 1026.18(s)'s coverage. The Bureau also proposes to add a new comment 18(s)–4 to explain that § 1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling that is personal property.

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 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. The Bureau has 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. 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 recognizes that government loan program guarantees may be legally distinguishable from mortgage insurance, they are functionally very similar. Moreover, such a technical, legal distinction is unlikely to be meaningful to most consumers. Therefore, the Bureau believes 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 proposes 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 is revised to conform to § 1026.18(s)(3)(i)(C). Specifically, the proposed comment clarifies 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 believes that including both amounts in the estimate of taxes and insurance on the table required by § 1026.18(s) will promote the informed use of credit, thereby carrying out the purposes of TILA, consistent with TILA section 105(a). In addition, the proposed disclosure will ensure 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 will improve consumer awareness and understanding of residential mortgage loans and will be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Proposed comment 18(s)(3)(i)(C)–2 is consistent with the treatment of mortgage guarantee fees on the projected payments table required by proposed §§ 1026.37(c) and 1026.38(c). *See* proposed comment 37(c)(1)(i)(C)–1.

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

As discussed below, the Bureau proposes 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

For the reasons discussed in detail below, the Bureau proposes 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 GFE and settlement statement requirements) and TILA.[125]

The Legal Authority discussion in part IV also notes that, notwithstanding this integrated disclosure mandate, the Dodd-Frank Act did not reconcile important differences between RESPA and TILA relating to the timing of delivery of the RESPA settlement statement and the TILA disclosure, as well as the persons and transactions on whom those disclosure requirements are imposed. Accordingly, to meet the integrated disclosure mandate, the Bureau believes that it must reconcile such statutory differences. In addition to those differences already noted, RESPA and TILA have certain differences in the types of transactions to which their respective disclosure requirements apply. The Bureau also recognizes that application of the integrated disclosure requirements 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 proposal for addressing them 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.[126] 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. *Id.* 2606(a). Thus, RESPA disclosures 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. Section 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. *Id.* 1603(1). In contrast with RESPA and Regulation X, however, TILA (and therefore Regulation Z) has no exclusion

[125] In addition to, and at the same times as, provision of the 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 is not proposing to integrate the booklet with the RESPA GFE and TILA disclosures, in the sense of building all of their contents into a single form, the Bureau is proposing 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 booklet requirement.

[126] 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.

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. In addition, loans secured by dwellings that are not real property, such as 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. Meanwhile, 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.

For the reasons discussed in detail below, the Bureau proposes to use its authority under TILA section 105(a), (b), and (f), RESPA sections 4(a) and 19(a), and Dodd-Frank Act sections 1032(a) and (f) and, for residential mortgage loans, 1405(b) to tailor the scope of this proposed rule so that the integrated disclosure requirements apply to all closed-end consumer credit transactions secured by real property, other than reverse mortgages. Doing so will ensure that, in most mortgage transactions, consumers receive integrated disclosure forms developed by the Bureau through extensive testing that will improve consumers' understanding of the transaction. Furthermore, applying a consistent set of disclosure requirements to most mortgage transactions will facilitate compliance by industry. However, for a subset of mortgage transactions, the Bureau believes that application of the integrated disclosure requirements would not improve consumer understanding or facilitate compliance and that these transactions should therefore be exempted from those requirements.

In some cases, the Bureau is proposing to exempt transactions that could arguably fall within Dodd-Frank Act sections 1032(f), 1098, and 1100A but are sufficiently different from other mortgage transactions that application of the integrated disclosure forms would neither improve consumer understanding nor facilitate compliance by industry (*e.g.,* reverse mortgages, open-end transactions secured by real property or a dwelling, and closed-end transactions secured by a dwelling but not real property). These transactions will remains 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.[127]

In other cases, the Bureau is proposing to expand the scope of certain mortgage disclosure requirements in order to ensure that, in most mortgage transactions, consumers receive a consistent set of disclosures, which the Bureau believes will improve consumer understanding and facilitate compliance. In particular, the proposed rule applies to certain transactions that are currently subject to Regulation Z but not Regulation X (construction-only loans, vacant-land loans, and 25-acre loans). In addition, many of the new Dodd-Frank Act mortgage disclosure requirements apply to ''residential mortgage loans,'' which—as noted above—are defined in section 1401 of the Dodd-Frank Act 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.[128] Thus, in addition to narrowing the application of these disclosures to exempt temporarily reverse mortgages and transactions that are not secured by real property, the proposed rule expands the application of these disclosure requirements to apply to transactions secured by real property that does not contain a dwelling. Similarly, the proposed rule both narrows and expands the application of other Dodd-Frank Act mortgage disclosure requirements to improve consumer understanding and facilitate compliance.[129]

Accordingly, the Bureau believes adjusting the application of the provisions of TILA and RESPA is within its general mandate under Dodd-Frank

[127] As discussed below, certain new mortgage disclosure requirements in the Dodd-Frank Act apply to these transactions, among others. Accordingly, transactions that are not subject to the proposed rule would be temporarily exempt from those requirements until the Bureau adopts a new disclosure scheme specific to those transactions.

[128] *See, e.g.,* Dodd-Frank Act § 1402(a)(2) (requires disclosure of loan originator identifier) (codified at TILA § 129B(b)(1)(B)); Dodd-Frank Act § 1414(c) (requires disclosure of anti-deficiency protections) (codified at TILA § 129C(g)); Dodd-Frank Act § 1414(d) (requires disclosure of partial payment policy) (codified at TILA § 129C(h)); Dodd-Frank Act § 1419 (requires disclosure of certain aggregate amounts and wholesale rate of funds) (codified at TILA § 128(a)(17)); Dodd-Frank Act § 1419 (requires disclosure of loan originator compensation) (codified at TILA § 128(a)(18)); Dodd-Frank Act § 1419 (requires disclosure of total interest) (codified at TILA § 128(a)(19)).

[129] *See, e.g.,* Dodd-Frank Act § 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) (codified at TILA § 129C(f)); Dodd-Frank Act § 1419 (requires certain payment disclosures for variable rate residential mortgage loans for which an escrow account will be established) (codified at TILA § 128(a)(16)); Dodd-Frank Act §§ 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) (codified at TILA § 129D(h) and (j) and 128(b)(4)); Dodd-Frank Act § 1475 (permits disclosure of appraisal management fees for federally related mortgage loans) (codified at RESPA § 4(c)).

Act section 1032(f) 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.) 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 proposed 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 also proposes the exemption pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that an exemption is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 proposal, the Bureau believes that the proposed exemptions are appropriate.

Coverage issues with HELOCs. Open-end transactions secured by real property or a dwelling (home-equity lines of credit, or HELOCs) and reverse mortgages are within the statutory scope of both TILA and RESPA and also reasonably could be considered ''mortgage loan transactions.'' Nevertheless, both types of transaction are by their natures fundamentally different from other forms of mortgage credit. For the reasons discussed below, the Bureau is proposing to exclude these types of transaction from the coverage of the integrated disclosure requirement.

HELOCs are open-end credit plans and therefore are appropriately subject to the open-end disclosure requirements in subpart B of Regulation Z. The Bureau looked to the closed-end content requirements under TILA section 128 in developing the integrated disclosures. It did so because the Dodd-Frank Act mandate to propose integrated disclosures includes section 5 of RESPA, which requires the GFE, and only closed-end transactions are subject to the parallel, early disclosure requirement under TILA section 128(b)(2)(A). Subjecting open-end transactions to the integrated disclosure requirements thus would result in consumers who are obtaining open-end credit receiving closed-end disclosures, many of which would be inapposite and therefore potentially confusing or even misleading. Further, 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 GFE, respectively, are satisfied by delivery of the open-end disclosures required by Regulation Z. And Regulation X § 1024.8(a) exempts HELOCs from the 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 achieve more effectively the purposes of both RESPA and TILA.[130]

Coverage issues with reverse mortgages. The Bureau is 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 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 is 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.[131] As with HELOCs, the Bureau expects to address reverse mortgages through a separate, future rulemaking process that will establish a distinct disclosure scheme.[132]

Coverage issues with chattel-dwelling loans. Chattel-dwelling loans (such as loans secured by mobile homes) do not involve real property, by definition. The Bureau estimates 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, were these

[130] 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.

[131] 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.

[132] The Board's 2010 Mortgage Proposal included several provisions relating to reverse mortgages. *See* 75 FR 58539, 58638–59. 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 instructed 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 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.

transactions subject to the integrated disclosures under this proposal, a significant portion of the disclosures' content would be inapplicable. The Bureau believes 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 has no basis for expecting that they would necessarily be as informative to consumers if so dramatically altered. The Bureau has 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 believes 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.

Although chattel-dwelling loans are subject to TILA, excluding them from coverage of the integrated disclosures would not excuse them from TILA's disclosure requirements. Rather, they would remain subject to the existing closed-end TILA disclosure requirements as implemented in § 1026.18. Thus, this approach preserves the current treatment of chattel-dwelling loans under both RESPA and TILA. The Bureau expects that it will undertake improvements to the § 1026.18 disclosures in the future, through a process similar to the one used in this proposal. 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 proposal. Excluding chattel-dwellings 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 § 1026.1(c) above, certain new mortgage disclosure requirements established by the Dodd-Frank Act are being deferred until such requirements are implemented by regulations. Such regulations include, but are not limited to, the final rule that will be adopted under this proposal. As noted above, the Bureau plans to address chattel-dwellings, as well as reverse mortgages and HELOCs, in future rulemakings. Accordingly, pursuant to the authority discussed above, those transactions also are subject to the temporary exemption in proposed § 1026.1(c) until those rulemakings are completed.

The Bureau's proposal. For the reasons discussed above, proposed § 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. Similarly, proposed § 1026.19(g) requires provision of the home buying 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, construction-only loans and vacant-land loans are subject to the proposed integrated disclosure and booklet requirements. On the other hand, chattel-dwelling loans are not subject to the proposed integrated disclosure or booklet requirements and, instead, remain subject to the existing disclosure requirements in § 1026.18. 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 proposed integrated disclosure or booklet requirements because such transactions are not subject to Regulation Z at all.

The Bureau believes that, although construction-only loans, vacant-land loans, and 25-acre loans all currently are exempt from RESPA coverage either by statute or regulation, consumers may benefit from the integrated disclosures in such transactions. 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 believes this treatment would deprive consumers in such transactions of the benefits of the enhanced disclosures developed for this proposal. Moreover, these types of transactions involve real property and, therefore, are amenable to disclosure of the information currently disclosed through the RESPA GFE and settlement statement requirements. Thus, the Bureau expects that creditors should be able to use existing systems to provide the integrated disclosures for such transactions. The Bureau solicits comment, however, on whether application of the integrated disclosures to these transactions will impose significant burdens on creditors.

The Bureau also believes 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 preserves 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 believes that eliminating this exemption could represent a significant expansion of TILA coverage and is unaware of any significant problems encountered by consumers obtaining credit from such small lenders that might justify such an expansion. Further, because such small creditors may lack the systems to comply with TILA, 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 expects the impact of such an exemption to be limited. Based on data reported for 2010 under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.,* the Bureau notes that 569 creditors (seven percent of all HMDA reporters) reported five or fewer originations and, more significantly, that their combined originations of 1399 loans equaled only 0.02 percent of all originations reported under HMDA for that year. These transactions would remain subject to the RESPA disclosure requirements under Regulation X.

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 is also 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.[133] 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 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 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 settlement statement during the business day immediately preceding the day of settlement. *Id.* These requirements are implemented in Regulation X § 1024.10(a).

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 Bureau is proposing to integrate the TILA and RESPA good faith estimate requirements in a new § 1026.19(e). The Bureau is also proposing to integrate the TILA and RESPA settlement statement requirements in a new § 1026.19(f). Finally, as appropriate, the Bureau is proposing to incorporate related statutory and regulatory requirements into § 1026.19 and to make conforming amendments.

19(a) Reverse Mortgage Transactions Subject to RESPA

As discussed above, the proposal 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 proposed § 1026.19(e) and (f). Pursuant to its authority under section 105(a) of TILA, the Bureau proposes to amend § 1026.19(a)(1)(i) to apply only to reverse mortgage transactions subject to both § 1026.33 and RESPA. This proposed amendment is consistent with TILA's purpose in that it seeks to ensure meaningful disclosure of credit terms by requiring the integrated disclosures only with respect to the loans for which they were designed—mortgage loans secured by real property other than reverse mortgages. This modification will also 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). The Bureau also proposes to make conforming changes to § 1026.19(a)(1)(ii), to delete § 1026.19(a)(5), to delete comments 19(a)(5)(ii)–1 through –5, and to delete comments 19(a)(5)(iii)–1 and –2.

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

19(e)(1) Provision

19(e)(1)(i) Creditor

As discussed above, the Bureau is proposing to integrate the good faith estimate requirements in TILA section 128 and RESPA section 5 in § 1026.19(e)(1)(i), which 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 make good faith estimates of the disclosures listed in § 1026.37. Proposed comment 19(e)(1)(i)–1 explains 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. These disclosures must be provided in good faith. 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.

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

Currently, neither TILA's nor RESPA's disclosure requirements 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 GFE, provided that the mortgage broker otherwise complies with the relevant requirements of Regulation X, and provided that the lender remains responsible for ensuring that the mortgage broker does so.

The Bureau recognizes that, in some cases, permitting mortgage brokers to deliver the integrated disclosure may benefit consumers. Some consumers may have better relationships with mortgage brokers than with creditors, which may enable mortgage brokers to assist those consumers with understanding the GFE more effectively and efficiently. However, there are concerns regarding the ability of mortgage brokers to provide the information required by the integrated Loan Estimate accurately and reliably. For example, it is not clear that mortgage brokers have the ability to inform the consumer whether the lender intends to service the consumer's loan, or whether the lender will permit a person to assume the consumer's loan on the original terms. Similarly, it is uncertain that mortgage brokers have the ability to estimate taxes and insurance, which is a new disclosure on the Loan Estimate that is not included on the current RESPA GFE, to the level

[133] RESPA section 5(d) provides that ''Each 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.'' RESPA section 5(c) provides that ''Each 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.'' Thus, the lender must deliver the good faith estimate not later than three business days after receiving the consumer's application.

of specificity required for the Loan Estimate under proposed § 1026.19(e)(3). There is an additional concern that mortgage brokers do not have the technology necessary to comply with TILA's requirements regarding delivery of estimates, delivery of revised disclosures, and recordkeeping.

The Bureau proposes to exercise its authority under TILA section 105(a) and, with respect to residential mortgage loans, Dodd-Frank Act section 1405(b) to preserve the flexibility in current Regulation X by permitting the mortgage broker to provide the integrated Loan Estimate under § 1026.19(e)(1)(ii), subject to certain limitations. This proposed provision is consistent with TILA's purpose in that consumers will be able to compare more readily the credit terms available if mortgage brokers and creditors are able to disclose available credit terms by use of the Loan Estimate. In addition, this modification will be in the interest of consumers and the public because consumer understanding and awareness will be improved if consumers can rely on the Loan Estimate regardless of whether it is provided by a creditor or mortgage broker, consistent with Dodd-Frank Act section 1405(b). Specifically, proposed § 1026.19(e)(1)(ii) provides that, in providing the Loan Estimate, the mortgage broker must act 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 seeks comment on the ability of mortgage brokers to comply with the requirements of TILA. In addition, the Bureau seeks 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.

Proposed comment 19(e)(1)(ii)–1 explains that a mortgage broker may provide the disclosures required under § 1026.19(e)(1)(i) instead of the creditor. 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. 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 provides further guidance on the mortgage broker's responsibilities in the event that the mortgage broker provides the disclosures required under § 1026.19(e), explaining that if a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must comply with the requirements of § 1026.19(e). For example, 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). 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 discusses the creditor's responsibilities in the event that a mortgage broker provides disclosures under § 1026.19(e). The proposed comment explains that if a mortgage broker issues any disclosure required under § 1026.19(e) in the creditor's place, the creditor remains responsible under § 1026.19(e) for ensuring that the requirements of § 1026.19(e) have been satisfied. For example, the creditor must ensure that the 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). The creditor does not satisfy the requirements of § 1026.19(e) if it provides duplicative disclosures. For example, a creditor does not meet its burden by issuing disclosures required under § 1026.19(e) that mirror disclosures already issued by the broker for the purpose of demonstrating that the consumer received timely disclosures. If the broker provides an erroneous disclosure, the creditor is responsible and may not issue a revised disclosure correcting the error. The creditor is expected to maintain communication with the broker to ensure that the broker is acting in place of the creditor. This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 8–10, # 16, 26, 29 (''GFE—General''). Disclosures provided by a 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 discusses 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 explains that § 1026.19(e)(1)(ii) requires mortgage brokers to comply with § 1026.19(e)(2)(ii) if a mortgage broker provides any disclosures under § 1026.19(e). For example, 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.

19(e)(1)(iii) Timing

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 GFE not later than three business days after receiving the consumer's application, but does not require provision at least seven business days before consummation. These requirements are implemented in § 1026.19(a)(1)(i) and (a)(2)(i) of Regulation Z and § 1024.7(a)(2) of Regulation X, respectively.

The Bureau believes that, for the proposed rule to be consistent with the requirements of both statutes, both the three-business-day delivery requirement and the seven-business-day waiting period should apply to the integrated Loan Estimate. Although RESPA does not contain a seven-business-day waiting period, this waiting period is consistent with the purposes of RESPA, and adopting it for the integrated disclosures may 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 proposes § 1026.19(e)(1)(iii), which provides that the creditor shall 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 shall deliver these disclosures not later than the seventh business day before consummation of the transaction. This proposed provision is consistent with TILA's purposes in that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, thereby assuring a meaningful

disclosure of credit terms. This proposed regulation is 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. In addition, the Bureau is proposing this provision pursuant to its authority under Dodd-Frank Act section 1032(a) because the proposal ensures that the features of the credit transaction are fully, accurately, and effectively disclosed to the consumer in a manner that permits consumers to understand the costs, benefits, and risks associates with the mortgage loan by providing sufficient time to review, question, and understand the entire cost of the transaction, which is also in the best interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 19(e)(1)(iii)–1 further clarifies this provision and provides illustrative examples. Proposed comment 19(e)(1)(iii)–2 discusses the waiting period, providing 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. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures, because, for the purposes of § 1026.19(e)(1)(iii), Saturday is a business day, pursuant to § 1026.2(a)(6).

Proposed comment 19(e)(1)(iii)–3 relates to denied or withdrawn applications, explaining that the creditor may 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. In that case, or if the consumer withdraws the application within the three-business-day period, the creditor need not make the disclosures required under § 1026.19(e)(1)(i). If the creditor fails to provide early disclosures and the transaction is later consummated on the terms originally applied for, then the creditor violates § 1026.19(e)(1)(i). If, however, the consumer amends 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. But the amended application is a new application subject to § 1026.19(e)(1)(i).

19(e)(1)(iv) Delivery

Section 128(b)(2)(E) of TILA 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 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 proposes § 1026.19(e)(1)(iv), which states 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 explains 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. 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 contains illustrative examples. Proposed comment 19(e)(1)(iv)–2 clarifies that the presumption established in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. However, creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). The proposed comment also contains illustrative examples.

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.

Although the Bureau understands that waivers based on a bona fide personal financial emergency are rare, this exception serves 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 is proposing § 1026.19(e)(1)(v), which allows a consumer to waive the seven-business-day waiting period in the event of a bona fide personal financial emergency. In addition, the Bureau seeks comment on the nature of waivers based on bona fide personal financial emergencies. The Bureau also seeks 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 explains 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 consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the individual facts and circumstances. 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. 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

provides illustrative examples of this requirement.

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, as explained above, Regulation X provides that where a lender or mortgage broker permits a borrower to shop for third party settlement services, the lender or broker must provide the borrower with a written list of settlement services providers at the time the GFE is provided on a separate sheet of paper. 12 CFR part 1024 app. C. HUD intended this requirement to enable consumers to shop for settlement service providers, thereby enhancing market competition and lowering settlement service costs for consumers. *See* 73 FR at 14030. The Bureau agrees that the written list of settlement service providers may benefit consumers by fostering settlement service shopping.

Therefore, the Bureau proposes § 1026.19(e)(1)(vi). As an initial matter, proposed § 1026.19(e)(1)(vi)(A) provides 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. Comment 19(e)(1)(vi)–1 provides examples of minimum requirements that are and are not reasonable. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. In contrast, a creditor may not require the consumer to choose a provider from a list provided by creditor. This comment also clarifies that the requirements of § 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) provides that the creditor shall identify the services for which the consumer is permitted to shop in the Loan Estimate. Comment 19(e)(1)(vi)–2 clarifies that § 1026.37(f)(3) contains the content and format requirements for this disclosure.

Proposed § 1026.19(e)(1)(vi)(C) 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. It further requires that the list be provided separately from the Loan Estimate but in accordance with the timing requirements for that disclosure (*i.e.,* within three days after application).

Comment 19(e)(1)(vi)–3 explains 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 also refers to the model list provided in form H–27.

Comment 19(e)(1)(vi)–4 clarifies 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 also clarifies 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. However, if the creditor determines that there is only one available settlement service provider, the comment clarifies that the creditor need only identify that provider on the written list of providers. The guidance regarding availability is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 15, # 7 (''GFE—Written list of providers'').

Comment 19(e)(1)(vi)–5 refers to form H–27 for an example of a statement that the consumer may choose a provider that is not included on that list. 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. It further clarifies that the creditor may also identify in 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. This may be accomplished by placing the services under different headings.

Finally, comment 19(e)(1)(vi)–7 discusses how proposed § 1026.19(e)(1)(vi) relates to the requirements of RESPA and Regulation X. The proposed comment explains that § 1026.19 does not prohibit creditors from including affiliates on the written list under § 1026.19(e)(1)(vi). However, a creditor that includes affiliates on the written list must also comply with § 1024.15 of Regulation X. This comment is consistent with guidance provided by HUD in its RESPA FAQs p. 16, # 9 (''GFE—Written list of providers''). The proposed comment also explains that the written list is a ''referral'' under § 1024.14(f). This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 14, # 4 (''GFE—Written list of providers'').

In addition to these proposed regulations and comments, the Bureau solicits comment regarding whether the final rule should provide more detailed requirements for the written list of providers. The Bureau also solicits comment regarding whether the final rule should include additional guidance regarding the content and format of the provider list.

This proposal is made 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. This proposed provision is 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. This provision is consistent with section 129B(e) of TILA because failing to inform borrowers of available settlement service providers increases the difficulty of shopping for those services, which is not in the interest of the borrower. It achieves the purposes of RESPA because disclosure of available settlement service providers encourages consumer shopping and settlement service provider competition, which will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services. In addition, the requirements in proposed § 1026.19(e)(1)(vi) are in the interest of consumers and in the public interest because they will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure by informing consumers about shopping for settlement service providers and making consumers aware of different settlement service providers available for the transaction, consistent with Dodd-Frank Act section 1405(b).

19(e)(2) Pre-Disclosure Activity

19(e)(2)(i) Imposition of Fees on Consumer

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 expressly 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 report.

Thus, Regulation X requires consumers to take an additional affirmative step before new fees may be charged. The Bureau believes that the goals of the integrated disclosure are best served by adopting the approach under Regulation X. The Bureau intends for consumers to use the integrated disclosure to make informed financial decisions. This goal may also be inhibited if fees are imposed on consumers before a consumer indicates intent to proceed. 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 for which the consumer originally asked. 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 intends for consumers to use the integrated disclosure to compare loan products from different creditors. 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. 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. 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. Or, consumers may determine 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 RESPA section 19(a), the Bureau proposes § 1026.19(e)(2)(i)(A), which provides that no 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. This proposed regulation carries out the purposes of TILA because requiring the specific identification of the fee imposed assures meaningful disclosures of credit terms, consistent with section 105(a) of TILA, and it achieves the purposes of RESPA because the more specific identification of the fee is a more effective method of advance disclosure, consistent with section 19(a) of RESPA.

Proposed comment 19(e)(2)(i)(A)–1 explains 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 allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B). Proposed comment 19(e)(2)(i)(A)–2 explains that the consumer may indicate 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 creditor must document this communication to satisfy the requirements of § 1026.25. The proposed comment also includes illustrative examples.

Proposed comment 19(e)(2)(i)(A)–3 discusses the collection of fees and provides 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). However, the consumer must receive the disclosures required by § 1026.19(e)(1)(i) and indicate an intent to proceed with the mortgage loan transaction before paying or incurring any other fee imposed by a creditor or other person in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i). Proposed comment 19(e)(2)(i)(A)–4 provides illustrative examples regarding these requirements.

Proposed comment 19(e)(2)(i)(A)–5 discusses determining when a particular charge is ''imposed by'' a person. The proposed comment provides 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. For example, a creditor may not require the consumer to provide a $500 check 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 creditor in this example does not comply even if the creditor does not deposit the check until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer subsequently indicates intent to proceed. Similarly, a creditor may not require the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed, even if the creditor promises not to charge the consumer's credit card for the $500 processing fee until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer subsequently indicates intent to proceed. In contrast, a creditor complies with § 1026.19(e)(2) if the creditor requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and subsequently indicates intent to proceed if the consumer's authorization is only to pay for the cost of a credit report. This is so even if the creditor maintains the consumer's credit card number on file and charges the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) are received and the consumer subsequently indicates 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

Section 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 believes that the purposes of the integrated disclosure are better served by adopting the terminology used by Regulation X. 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.

Another issue stems from existing commentary under Regulation Z, which 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 believes that the better approach, for purposes of the integrated disclosure, is to require a fee for a credit report to be disclosed with the more precise label. 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. Additionally, compliance costs are generally reduced when regulatory requirements are standardized. Accordingly, the Bureau proposes § 1026.19(e)(2)(i)(B), which provides 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 clarifies 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. Also, the creditor must accurately describe or refer to this fee, for example, as a ''credit report fee.''

19(e)(2)(ii) Written Information Provided to Consumer

The Bureau understands that consumers often request written estimates of loan terms before receiving the RESPA GFE. The Bureau recognizes that these written estimates may be helpful to consumers. However, the Bureau is concerned that consumers may 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 be unreliable, with the disclosures required under § 1026.19(e)(1)(i), which must be made in good faith. The Bureau is also concerned that unscrupulous creditors may use formatting and language similar to the disclosures required under § 1026.19(e)(1)(i) to deceive consumers into believing that the creditor's unreliable written estimate is actually the disclosure required under § 1026.19(e)(1)(i). These concerns are 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.''

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. Thus, the disclosures required under § 1026.19(e)(1)(i) may be more accurate indicators of cost than preliminary written estimates. 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. Consumers may not appreciate that preliminary written estimates, which are not subject to the good faith requirements, may not constitute a full, accurate, and effective description of costs, as opposed to relying on the disclosures required under § 1026.19(e)(1)(i), which must be made in good faith. The Bureau seeks 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 proposes 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. Proposed § 1026.19(e)(2)(ii) would require creditors to provide consumers with a disclosure indicating that the written estimate is not the Loan Estimate required by RESPA and TILA, if a creditor provides a consumer with a 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. This proposed provision is consistent with section 105(a) of TILA in that it will 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. This proposed provision 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 explains that this requirement applies only to written information specific to the consumer. For example, if the creditor provides a document showing the estimated monthly payment for a mortgage loan, and the estimate was based on the estimated loan amount and the consumer's estimated credit score, then the creditor must include a notice on the document. In contrast, if the creditor provides the consumer with a preprinted list of closing costs common in the consumer's area, the creditor need not include the warning. The proposed comment also clarifies that this requirement does not apply to an advertisement, as defined in § 1026.2(a)(2). This proposed comment also contains a reference to comment 19(e)(1)(ii)–4 regarding mortgage broker provision of written estimates specific to the consumer.

19(e)(2)(iii) Verification of Information

Section 1024.7(a)(5) of Regulation X currently provides that a creditor may collect any information from the consumer deemed necessary, but the creditor may not require the consumer to provide documentation verifying any information the consumer provided in connection with the application. In order to minimize the cost to consumers of obtaining Loan Estimates, the Bureau believes that this provision should apply to the integrated disclosure. The Bureau proposes § 1026.19(e)(2)(iii), which provides 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 makes 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 proposed regulation will 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. This proposed provision is 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. This proposed regulation will enable consumers to receive information about the mortgage loan without imposing costs or burdens on the consumer, which will facilitate shopping, thereby effecting 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(e)(2)(iii)–1 explains 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 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. For example, 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).

19(e)(3) Good Faith Determination for Estimates of Closing Costs

Background

As noted above, section 102(a) of TILA provides: ''The Congress finds 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. The informed use of credit results from an awareness of the cost thereof by consumers.'' 15 U.S.C. 1601(a). This section further provides that the 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.'' *Id.*

To further these goals, TILA requires creditors to disclose certain information about the cost of credit. In the context of certain mortgage loans, the disclosures required under section 128(a) of TILA generally are either costs imposed in connection with the extension of credit, or measures of such costs, such as the annual percentage rate. 15 U.S.C. 1638(b). Examples of items that affect the APR are fees and charges imposed by creditors, such as points and underwriting fees. Section 128(b)(2)(A) provides that these disclosures must be delivered not later than three business days after the creditor receives the consumer's written application. Section 128(b)(2)(D) requires the creditor to inform the consumer, no later than three business days before consummation, if the costs of the mortgage loan, as reflected in the annual percentage rate, change from what was originally disclosed. 15 U.S.C. 1638(b)(2)(A), (D).

TILA contains tolerances for determining whether an estimated disclosure is accurate. For example, section 106(f) provides that the finance charge is not accurate if the estimated finance charge disclosed to the consumer changes by more than a certain amount. 15 U.S.C. 1605(f). If disclosures such as these become inaccurate, TILA requires creditors to provide revised disclosures with the corrected amounts. 15 U.S.C. 1638(b)(2)(D). TILA also permits the creation of new tolerances if the Bureau deems them necessary. Specifically, section 121(d) provides that the ''Bureau shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with [TILA], and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances.'' 15 U.S.C. 1631(d). Section 121(d) further provides that the ''Bureau shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of [TILA].'' *Id.*

Historically, TILA has generally focused on the costs imposed by creditors alone. In contrast, RESPA, in broadly focusing on all costs associated with real estate transactions, was designed to address market failures in the real estate settlement services industry. Echoing TILA, Congress enacted RESPA to ''[e]nsure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices.'' 12 U.S.C. 2601(a). Congress identified ''more effective advance disclosure to home buyers and sellers of settlement costs'' as a specific purpose of RESPA. *Id.*

RESPA requires early disclosure of settlement costs to further Congress's stated purpose that consumers should receive effective advance disclosures of such costs. As discussed above, RESPA requires lenders to provide consumers with good faith estimates of settlement costs, which include most fees charged in connection with a real property settlement, within three days of receiving a consumer's application for a mortgage loan. 12 U.S.C. 2602(3), 2604(c), (d).

Regulation Z also contains a good faith estimate requirement, which implements the requirements of TILA section 128(b)(2)(A), in the context of certain mortgage loans. Section 1026.19(a)(1)(i) of Regulation Z provides that ''the creditor shall make good faith estimates of the disclosures required by § 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.'' Section 1026.18 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.

After a 10-year investigatory process, HUD amended Regulation X to establish new regulatory requirements surrounding the content, accuracy, and delivery of the GFE. HUD's 2008 RESPA Final Rule added ''tolerance'' categories limiting the variation between the estimated amounts of settlement charges included on the GFE and the actual amounts included on the RESPA settlement statement. Section 1024.7(e)(1) of Regulation X provides that the actual charges at settlement may not exceed the amounts included on the

GFE for (1) the origination charge, (2) while the borrower's interest rate is locked, the credit or charge for the interest rate chosen, (3) while the borrower's interest rate is locked, the adjusted origination charge; and (4) transfer taxes. Section 1024.7(e)(2) provides that the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the estimated charges for those services included on the GFE for (1) lender-required settlement services, where the lender selects the third party settlement service provider, (2) lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator, and (3) government recording charges. Section 1024.7(e)(3) provides that all other estimated charges may change by any amount prior to settlement.

The 2008 RESPA Final Rule also provided that the estimates included on the GFE are binding, with certain limited exceptions and subject to variations permitted by the tolerance categories. 73 FR at 68218–19. Section 1024.7(f)(1) provides: ''If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower.'' Section 1024.7(f)(2) provides: ''If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower.''

''Changed circumstances'' are defined as (1) acts of God, war, disaster, or other emergency; (2) information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided, which may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE; (3) new information particular to the borrower or transaction that was not relied on in providing the GFE; or (4) other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems. 12 CFR 1024.2(b). Changed circumstances, however, do not include the borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided, or market price fluctuations by themselves. *Id.*

Additionally, § 1024.7(f)(3) provides: ''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 loan originator may provide a revised GFE to the borrower.'' Section 1024.7(f)(4) provides: ''If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator * * * the loan originator is no longer bound by the GFE.''

The exception provided by § 1024.7(f)(4) relates to the ability of consumers to use the GFE to shop and compare mortgage loans, which is one of the primary purposes of the 2008 RESPA Final Rule. A related provision, § 1024.7(c), provides that ''the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability.''

Section 1024.7(f)(5) provides: ''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. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. All other charges and terms must remain the same as on the original GFE, except as otherwise provided [under] this section.''

Section 1024.7(f)(6) provides: ''In transactions involving new construction home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided [under] this section.''

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 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). ''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. No distinction is made 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.

Furthermore, as discussed above, section 1032(f) of the Dodd-Frank Act requires integration of the disclosure provisions under TILA and RESPA. Sections 1098 and 1100A of the Dodd-Frank Act further provide that the purpose of the integrated disclosure 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.'' 15 U.S.C. 1604(b), 12 U.S.C. 2603(a). These amendments require integration of the regulations related to the accuracy and delivery of the disclosures, as well as their content.

Issues With Integrating Different Approaches to Good Faith Estimates, Tolerances, and Redisclosure

As discussed above, TILA generally focused on redisclosure in response to changes in the cost of credit that occurred during the mortgage loan origination process. Over time, practices developed that diminished the value of the disclosures. Congress addressed these problems by revising TILA from time to time, seeking to ensure that consumers could use the disclosures to shop for credit.[134] However, problems

[134] In explaining the 1980 amendment to TILA, Congress stated that the amendment ''would also make disclosures more meaningful to the consumer in mortgage transactions in two respects. First, the creditor would be required to give truth in lending disclosures within 3 days after receiving a consumer's written application. * * * Under current law, Truth in Lending disclosures are provided for the first time at the real estate closing, making them all but useless for credit shopping.'' S. Rep. No. 368, 96th Cong., 1st Sess. 1979, *reprinted in* 1980 U.S. Code Cong. & Ad. News 236, 266. Congress also amended the disclosure

in the market persisted, and evidence suggests that consumers were often surprised by the difference between their expectations of the cost of credit, based on the good faith estimates provided during the shopping phase, and the actual cost of credit revealed at settlement.[135]

The issues arising under TILA were even more pronounced under RESPA. HUD spent over ten years investigating problems in the settlement services industry.[136] HUD found that the principles of RESPA were undermined by market forces operating against consumers.[137] In the context of home purchases, consumers' actual settlement costs were sometimes dramatically different from those originally estimated. Consumers did not realize this until immediately before settlement—the point in time where consumers are in the weakest bargaining position. As a result, consumers were often unable to challenge increases in settlement costs when confronted with them at the closing table.[138] HUD found that these high closing costs were exacerbated by the fact that consumers rarely shopped for settlement service providers.[139] Accordingly, settlement service providers were not accountable to the consumer, and creditors had little motivation to monitor the legitimacy of settlement costs because those costs were simply passed on to the consumer.[140]

These problems led HUD to the determination that a subjective requirement that estimates be made in ''good faith'' was not sufficient to achieve the purposes of RESPA. The tolerances included in the 2008 RESPA Final Rule established objective measures of good faith that were designed to ensure that consumers were provided with estimates more closely tied to the actual costs. The provisions related to redisclosure provided industry with the flexibility to revise the charges originally estimated when legitimate and unforeseen issues arose that affected the cost of settlement services, while also ensuring that consumers were not pressured into paying unwarranted costs. The 2008 RESPA Final Rule established a requirement that costs be available for at least 10 business days, along with requirements related to allowing consumers to shop for settlement service providers, sought to re-introduce competition into the markets for both mortgage loan origination and settlement service providers, in accordance with RESPA's original principles.

These revisions to Regulation X took effect in 2010. Some concerns were identified during the implementation process. In particular, concerns have been raised regarding the treatment of fees charged by affiliates of the lender.[141] Under the 2008 rule, affiliates' fees are permitted to increase by as much as 10 percent prior to the real estate closing, in addition to increases based on changed circumstances and other similar events. Settlement service providers such as appraisal management companies and title companies may be affiliated with the creditor. Fees paid to these affiliates may constitute a large percentage of the 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 loan. This variance is of particular concern given the nature of the relationship between creditors and their affiliates. Regulation X subjects fees paid to creditors to a zero percent tolerance because credit providers are expected to know their own costs. The same reasoning may apply to services provided by affiliates. An affiliate relationship between a creditor and a provider should facilitate greater communication and coordination than a relationship between independent entities acting at arm's length. This is especially so given that the rules require precise estimates only of costs that are likely to occur and provide flexibility for cost revisions when an unexpected event occurs, such as a changed circumstance or a change requested by the consumer.

Additional concerns about affiliate relationships stem from the fact that no justification is required if affiliate fees increase by as much as ten percent. Given that the affiliate relationship is beneficial to the creditor, this may create an incentive to increase fees at the real estate closing without justification, solely to obtain all money available under the tolerance. A rule that encourages such rent-seeking behavior could harm consumers by unjustifiably increasing settlement costs, which is contrary to the purposes of RESPA.

Another concern with Regulation X centers on the ability of consumers to shop for settlement service providers. Regulation X requires loan originators to provide borrowers with a written list of providers in some cases.[142] This provision was intended to enable consumers to shop for settlement

requirements in 1994 to provide more extensive disclosure on high-cost mortgage loans. Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, Title I, § 152(d), 108 Stat. 2191 (Sept. 23, 1994); 15 U.S.C. 1639(a). Congress amended the TILA disclosure requirements again in 1996 to provide disclosures related to variable-rate mortgage loans. Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104–208, Title I, Subtitle A, § 2105, 110 Stat. 3009 (Sept. 30, 1996); 15 U.S.C. 1638(a).

[135] ''For refinancings and second mortgages that fall below the HOEPA triggers, the only required written disclosure of the APR and finance charge is usually given at closing on the TILA disclosure, after which the borrower has only the three day rescission period for price shopping, again too short a period to obtain competing offers.'' Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price,* 65 Md. L. Rev. 707, 750 (2006). ''[T]he prices on subprime loans often turned out to be a moving target. A lender or broker might have the customer apply for one type of loan, price A, say a fixed rate loan; changed the loan during underwriting to an adjustable rate mortgage, price B; and then finally change the loan at closing to something different at price C, say an interest only mortgage.'' *Federal Reserve Board Public Hearing Re: Building Sustainable Homeownership: Responsible Lending and Informed Consumer Choice,* 155 (July 11, 2006) (testimony of Patricia McCoy), available at *http://www.federalreserve.gov/events/publichearings/hoepa/2006/20060711/transcript.pdf.*

[136] Joint Report to the Congress Concerning Reform of the Truth in Lending Act and the Real Estate Settlement Procedures Act, (July 1998); 2000 HUD-Treasury Report; 2002 RESPA Proposal (67 FR 49134).

[137] ''Estimates appearing on the GFEs can be significantly lower than the amount ultimately charged at settlement and do not provide meaningful guidance on the costs borrowers will incur at settlement. While unforeseeable circumstances can drive up costs in particular circumstances, in most cases loan originators have the ability to estimate final settlement costs with great accuracy.'' 73 FR 14030, 14039 (March 14, 2008).

[138] ''After agreeing to the price of a house, too many families sit down at the settlement table and discover unexpected fees that can add hundreds, if not thousands, of dollars to the cost of their loan. And at that point, they have no other options. On the spot, the borrower is forced to make an impossible choice: either hand over the extra cash and sign, or lose either the house or the funds needed to refinance.'' *Reforming the Real Estate Settlement Procedure: Review of HUD's proposed RESPA Rule,* 107th Cong. (October 3, 2002) (testimony of Mel Martinez, Secretary of the U.S. Department of Housing and Urban Development).

[139] *See* 73 FR 14030, 14034 (March 14, 2008).

[140] ''There is not always an incentive in today's market for originators to control these costs. Too often, high third-party costs are simply passed through to the consumer.'' U.S. Dep't. of Housing and Urban Dev., Office of Pol'y Dev. and Research, *RESPA: Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR–5180–F–02, Final Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs,* iv (2008). *See also* Eskridge, supra note 83, at 1184–1185.

[141] For purposes of this proposal, ''affiliate'' means 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 *et seq.*).

[142] ''Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.'' 12 CFR 1024, app. C.

service providers, based on the principle that such shopping would spur competition in the settlement service market, thereby reducing the incidence of unnecessarily high settlement service charges. However, concerns have been raised that, rather than simply providing consumers with lists of available settlement service providers to facilitate shopping, creditors have instead developed ''closed'' lists that include only the creditor's ''preferred'' providers and are requiring consumers to select one of those providers. This practice effectively may limit competition among settlement service providers instead of promoting competition, contrary to the goals of the regulation.

The Bureau's Proposal

An enhanced reliability standard. The Bureau believes that consumers would benefit from having more reliable estimates of costs. A meaningful ''good faith'' estimate should be based on the best information reasonably available to the person providing the estimate. In many cases, a creditor should be able to estimate costs with considerable precision based on its familiarity with its own underwriting process and its knowledge of the real estate settlement process. A creditor originating a loan in a geographical area with which it is unfamiliar, or using settlement service providers with whom it is not familiar, may not be able to estimate the settlement service costs as accurately. In cases such as these, the ten-percent tolerance currently provided by Regulation X may be appropriate.

However, creditors who have affiliate relationships with service providers should have access to the providers' data about the actual costs of those services, including how often changed circumstances occur, and the magnitude of resulting cost increases. Thus, in many cases, creditors may be able to provide accurate estimates of settlement costs for services provided by affiliates, and therefore should not need to rely on the ten-percent tolerance. In addition to the increased level of knowledge and communication suggested by the affiliate relationship, the frequency of business with a particular affiliate provides creditors with even more data, which may be used to develop more accurate estimates. It may be reasonable to expect creditors to use the significant amount of historical settlement cost data available to them, by virtue of the repeat business from affiliate relationships, to develop highly accurate estimates of costs. Accordingly, the Bureau proposes to include charges paid to affiliates of the creditor in the category of fees that may not vary from the estimated amount disclosed, subject to legitimate reasons for revision such as changed circumstances and revisions requested by the consumer.

The Bureau also believes that consumers would benefit from a more competitive market for settlement service providers. A list of service providers offers consumers the opportunity to speak with multiple providers and select the providers and services that best fit consumers' needs. Although the Bureau understands the concerns regarding preferred provider lists identified above, such lists may be a natural outgrowth of creditors' business and are not necessarily harmful to consumers. Indeed, it would be much more difficult for creditors to provide good faith estimates of settlement service charges without basing such estimates on charges imposed by actual settlement service providers in a particular area with whom the creditor has established relationships and regularly does business.

Creditors that assemble preferred provider lists are in a superior position of knowledge with respect to the expected costs of the services of those providers, for reasons similar to those seemingly inherent in the creditor-affiliate relationship. The relationship between creditor and preferred provider suggests a level of communication and knowledge that is absent from a relationship between a creditor and a settlement service provider who do not regularly do business. The repeat business afforded by the preferred provider relationship should also give creditors access to statistically significant amounts of historical settlement charge data, with which the creditor can accurately predict the cost of a settlement service, in the absence of a valid reason for revision such as a changed circumstance. It may be reasonable to expect the creditor to use this relationship for the benefit of consumers in the form of more accurate initial estimates of costs.

The creditor's knowledge may be less certain with preferred providers, with whom the creditor has some pre-existing relationship or agreement, than for affiliates, with whom the creditor has an actual control-based relationship. But this difference is countered when the creditor does not permit the consumer to shop independently for the settlement service. Such closed lists require consumers to choose providers preferred by the creditor and prohibit consumers from choosing more cost efficient, or perhaps higher quality, settlement service providers. Consumers presented with a closed list of preferred providers are neither benefitted by more accurate estimates nor able to protect their own financial interests. Consumers should have the ability to influence the quality and cost of settlement services related to what, for most consumers, will be the most significant financial obligation of their lives. If the creditor arrogates that opportunity, then the creditor should also take a greater responsibility for estimating accurately and assume some of the risk of under-estimation if it does not. Thus, the Bureau proposes to include charges paid to non-affiliated third party service providers in the category of fees that may not vary from the estimated amount disclosed if the creditor does not permit the consumer to shop for those services, subject to legitimate reasons for revision such as changed circumstances and revisions requested by the consumer.

This proposal seeks to strike the appropriate balance between consumers' need for accurate, timely, and reliable information about the costs of a mortgage loan and industry's need for flexibility for the wide range of unexpected issues that arise during the mortgage loan origination process. Creditors are routine participants in the mortgage market, but individual consumers are not. As a result, creditors have access to important cost data that are unavailable to consumers. It therefore may be reasonable to expect creditors to use this advantage to provide consumers with reasonably accurate estimates of the costs associated with a real estate settlement. This consideration is more compelling when creditors have pre-existing, and advantageous, relationships with affiliated and ''preferred'' settlement service providers. More reliable estimates are inherently beneficial because they enable consumers to make informed and responsible financial decisions, they promote honest competition among the majority of industry providers who want a fair and level playing field, and they prevent financial surprises at the real estate closing that may greatly harm consumers.

More reliable estimates also make it more likely that consumers will shop for mortgage loans based on all relevant costs among multiple providers, furthering one of the key principles of TILA and RESPA. Encouraging consumers to shop for settlement services further facilitates a competitive market for those services, thereby preventing unnecessarily high settlement costs and achieving one of the key purposes of RESPA. This approach furthers the goals of the 2008

RESPA Final Rule and the principles upon which TILA and RESPA are founded.

Legal authority. The Bureau is proposing to adopt an enhanced reliability standard for settlement costs 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.

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 proposed adjustments and exceptions may be appropriate. The proposal is consistent with the statute's purpose in that it seeks to ensure that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The proposal has the potential to effectuate the statute's goals by ensuring more reliable estimates, which may increase the level of shopping for mortgage loans and foster honest competition for prospective consumers among financial institutions. The Bureau believes that technological advances in the mortgage loan origination market, coupled with the relationships that currently exist between creditors and the settlement service industry, may have improved the ability of creditors to provide accurate estimates, subject to reasonable exceptions. The proposal could also prevent potential circumvention or evasion of TILA by penalizing underestimation to gain a competitive advantage in situations where TILA requires good faith.

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. 15 U.S.C. 1631(d). The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d) and, based on that review, believes that the proposed tolerances may be appropriate. The proposal has the potential to 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. The narrowed tolerances may also prevent misleading disclosures by forcing creditors who have access to accurate cost information through affiliate networks or exclusive provider arrangements, and today use such information strategically to underestimate cost estimates, to absorb any overages.

The proposal also may prevent circumvention of TILA by preventing creditors from using the tolerances to capture rent through their affiliates, and thereby unnecessarily increasing the cost of credit. The proposed tolerances may be sufficiently narrow by focusing on areas where the creditor is, or reasonably should be, in a position of superior knowledge, while maintaining the existing tolerances in areas where the creditor is providing estimates based on less certain information, such as cost estimates for services provided by independent providers.

In addition, the proposed regulation is consistent with Dodd-Frank Act section 1032(a) because requiring more accurate initial estimates of the costs of the transaction, thereby limiting the possibility of strategic underestimation to gain a competitive advantage, will ensure that the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner than permits consumers to understand the costs, benefits, and risks associated the mortgage loan. It is also 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 cost 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) and, based on that review, believes that the proposed 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. 12 U.S.C. 2601(a), 2617(a). The Bureau has considered the purposes for which it may exercise its authority under RESPA section 19(a) and, based on that review, believes that the proposed rules and interpretations may be appropriate. The proposal has the potential to 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.

The Bureau solicits comment on all aspects of this proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the good faith requirements. The Bureau solicits comment on the frequency, magnitude, and causes of settlement cost increases. The Bureau also requests 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.

19(e)(3)(i) General Rule

Regulation X currently provides that the amounts imposed for the origination charge and transfer taxes may not exceed the amounts included on the RESPA GFE, unless certain exceptions are met. § 1024.7(e)(1). The items included under this category are generally limited to charges paid to lenders and brokers, in addition to transfer taxes.

The Bureau is proposing to incorporate this provision in new § 1026.19(e)(3)(i). Furthermore, as discussed above, the Bureau is proposing to expand the scope of the current regulation. Under the proposed rule, the default rule is that any charge paid by the consumer that exceeds the amount originally estimated on the disclosures provided pursuant to § 1026.19(e)(1)(i) was not provided in good faith. This default rule is subject to legitimate cost revisions when an unexpected event occurs, such as a changed circumstance or a change requested by the consumer. Also, the charges for certain items are subject to exceptions allowing other increases as permitted under § 1026.19(e)(3)(ii) and (iii). Thus, the Bureau believes that the rule offers a level of flexibility similar to the current rules under Regulation X. The Bureau believes that the primary impact of adopting this bright line default rule will be to protect consumers from unnecessary increases in charges.

Consequently, the Bureau proposes § 1026.19(e)(3)(i), which provides that the charges paid by or imposed on the consumer may not exceed the estimated amounts of those charges provided pursuant to § 1026.19(e)(1)(i), subject to permissible reasons for revision such as changed circumstances and revisions requested by the consumer, and except

as otherwise provided under § 1026.19(e)(3)(ii) and (iii).

During the Small Business Panel Review 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 lender or mortgage broker and to providers selected by the lender. *See* Small Business Review Panel Report at 34, 37–38, 40, 64, 67, and 71. The Small Business Review Panel recommended that the Bureau consider alternatives to expanding application of the zero-percent tolerance that would increase the reliability of cost estimates while minimizing the impacts on small entities. *See id.* at 29. The Bureau has given careful consideration to this recommendation, but has not yet identified any alternatives that would increase disclosure reliability while minimizing small entity impact. The Bureau solicits comment on any such alternatives. The Panel also recommended that the Bureau solicit comment on the effectiveness of the current tolerance rules. *Id.* Consistent with the Small Business Review Panel's recommendation, the Bureau solicits comment on whether the current tolerance rules have sufficiently improved the reliability of the estimates that lenders give consumers, while preserving lenders' flexibility to respond to unanticipated changes that occur during the loan process.

Proposed comment 19(e)(3)(i)–1 explains that § 1026.19(e)(3)(i) imposes a 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 § 1026.19(e)(3)(ii) and (e)(3)(iii) provide exceptions to the general rule for certain types of charges, those exceptions generally do 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 provides 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 comment provides examples of how situations such as these are treated for the purposes of § 1026.19.

Proposed comment 19(e)(3)(i)–3 discusses when items are characterized as transfer taxes, as opposed to recording fees. Transfer taxes are analyzed under § 1026.19(e)(3)(i) for purposes of determining whether an estimate is provided in good faith. Recording fees are analyzed under § 1026.19(e)(3)(ii) for purposes of determining whether an estimate is provided in good faith.

Proposed comment 19(e)(3)(i)–4 provides examples illustrating the good faith requirement in the context of specific credits, rebates, or reimbursements. 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 are not subject to the good faith determination requirements in § 1026.19(e)(3)(i) or (ii) if the increased specific credit, rebate, or reimbursement actually reduces the cost to the consumer. Specific credits, rebates, or reimbursements may 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 also provides illustrative examples of these requirements.

Proposed comment 19(e)(3)(i)–5 discusses how to determine ''good faith'' in the context of lender credits. The proposed comment explains that the disclosure of ''lender credits,'' as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). These 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). These non-specific credits are negative charges to the consumer—as the lender credit decreases the overall cost to the consumer increases. Thus, 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) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). For example, if the creditor provides a $750 estimate for lender credits in the disclosures required by § 1026.19(e)(1)(i), but only a $500 lender credit is actually provided to the consumer at the real estate closing, the creditor does not comply with § 1026.19(e)(3)(i) because, although the actual lender credit was less than the estimated lender credit provided in the revised disclosures, the overall cost to the consumer increased and, therefore, did not comply with § 1026.19(e)(3)(i). See also § 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.

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

Regulation X § 1024.7(e)(2) currently provides that the sum of the amounts charged for all lender-required settlement services where the consumer does not independently choose a provider, title insurance, and recording charges may increase by as much as 10 percent prior to settlement, subject to revisions arising from exceptions such as changed circumstances. The Bureau believes that a more narrow regulation may be appropriate in this context. The Bureau therefore proposes § 1026.19(e)(3)(ii), which permits the sum of all charges for lender-required settlement services where the lender permits the consumer to shop for a provider other than those identified by the creditor and recording fees to increase by 10 percent for the purposes of determining good faith. As explained in the general discussion under § 1026.19(e)(3) above, the Bureau believes that the purposes of TILA and RESPA are better served by removing affiliate fees from this category and including other settlement services in this category only if the consumer is permitted to shop independently for a service provider. Proposed comment 19(e)(3)(ii)–1 explains 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 10 percent. Section 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 clarifies 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 10 percent, even if a particular charge does not increase by more than 10 percent. This proposed comment also clarifies that § 1026.19(e)(3)(ii) provides flexibility in disclosing individual fees by focusing on aggregate amounts, and provides illustrative examples.

Proposed comment 19(e)(3)(ii)–3 discusses 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 explains § 1026.19(e)(3)(ii), which 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). For example, if, in the disclosures provided pursuant to § 1026.19(e)(1)(i), a creditor includes an estimated fee for an unaffiliated settlement agent and permits the consumer to shop for a settlement agent, but the consumer does not choose a settlement agent, or chooses an agent identified by the creditor on the list required by § 1026.19(e)(1)(vi)(C), then the estimated settlement agent fee is included with the fees that may, in aggregate, increase by no more than 10 percent for the purposes of § 1026.19(e)(3)(ii). If, however, the consumer chooses a provider that is not on the written list, then good faith is determined according to § 1026.19(e)(3)(iii).

Proposed comment 19(e)(3)(ii)–4 discusses how the good faith determination requirements apply to recording fees. Recording fees are mandated by State or local law and paid to a government agency. Consequently, several of the requirements regarding good faith do not apply. The proposed comment explains 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 condition specified in § 1026.19(e)(3)(ii)(C), that the creditor permits the consumer to shop for the service, is similarly inapplicable. Therefore, estimates of recording fees need only satisfy the condition specified in § 1026.19(e)(3)(ii)(A) (*i.e.,* that the aggregate amount increased by no more than 10 percent) to meet the requirements of § 1026.19(e)(3)(ii).

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 agrees that certain types of estimates, such as those for property insurance premiums, may change significantly between the time that the original disclosures are provided and consummation. However, the Bureau believes that the regulation will be improved by specifically identifying which items are included in this category. Clear delineation of these items should facilitate compliance by reducing the need to question how to categorize those items. Thus, the Bureau proposes § 1026.19(e)(3)(iii), which provides that estimates of 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) 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.

Proposed comments 19(e)(3)(iii)–1, 19(e)(3)(iii)–2, and 19(e)(3)(iii)–3 explain 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 comments clarify 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 is concerned that unscrupulous creditors may 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. This concern must be balanced against the fact that some items may change significantly and legitimately prior to consummation. Furthermore, 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 strikes a balance between these considerations by imposing a general good faith requirement. Thus, proposed comment 19(e)(3)(iii)–1 explains 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. Differences between the amounts of such charges disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed upon the consumer do not constitute a lack of good faith, 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. For example, if the creditor requires homeowner's insurance but fails to include a homeowner's insurance premium on the estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor has not complied with § 1026.19(e)(3)(iii). However, if the creditor does not require flood insurance and the subject property is located in an area where floods frequently occur, but not located in a zone where flood insurance is required, failure to include flood insurance on the original estimates provided pursuant to § 1026.19(e)(1)(i) does not constitute a lack of good faith. Or, if the creditor knows that the loan must close on the 15th of the month but estimates prepaid interest to be paid from the 30th of that month, then the under-disclosure violates § 1026.19(e)(3)(iii).

Proposed comment 19(e)(3)(iii)–2 discusses the good faith requirement for required services chosen by the consumer that has been permitted to shop consistent with § 1026.19(e)(1)(vi)(A). The proposed comment explains that, if a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), 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 the original estimates for such fees to perform the good faith analysis required by § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges 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. However, 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. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor, and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). The comment also

clarifies 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), 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 discusses the good faith requirement for non-required services chosen by the consumer. 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. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor may include the charge for that item in the disclosures provided pursuant to § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). However, 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. For example, if the subject property is located in a jurisdiction where consumers are customarily represented at the real estate closing by their own attorney, but the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).

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. If the lender establishes one of these six exceptions, the RESPA GFE may be re-issued with revised estimates. The Bureau agrees that there are certain situations that may legitimately cause increases over the amounts originally estimated, and that the regulations should provide a clear mechanism for providing revised estimates in good faith. The Bureau proposes § 1026.19(e)(3)(iv), which provides that, for purposes of determining good faith, 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 illustrates this provision.

Consistent with current Regulation X,[143] proposed comment 19(e)(3)(iv)–2 clarifies that, to satisfy the good faith requirement, revised estimates may increase only to the extent that the reason for revision actually caused the increase and provides illustrative examples of this requirement. Proposed comment 19(e)(3)(iv)–3 discusses 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 believes that this requirement is encompassed within the requirements of § 1026.25. The proposed comment clarifies that the regulations include a documentation requirement related to the disclosures, but the requirements are located under § 1026.25, instead of § 1026.19. As discussed below, the Bureau is proposing to impose enhanced recordkeeping requirements under § 1026.25.

19(e)(3)(iv)(A) Changed Circumstance Affecting Settlement Charges

In general. Regulation X § 1024.7(f)(1) 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 agrees that creditors should be able to provide revised estimates if certain situations occur that increase charges. The Bureau proposes § 1026.19(e)(3)(iv)(A), which provides 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 10 percent. Proposed comment 19(e)(3)(iv)(A)–1 provides further explanation of this requirement and includes several practical examples.

Changed circumstance. As explained in the general discussion under § 1026.19(e)(3) above, Regulation X § 1024.2 generally defines changed circumstances as information and events that warrant revision of the estimated amounts included on the RESPA GFE. The Bureau generally agrees with the information and events included in the current definition. However, the Bureau has received feedback that the current definition is confusing. Thus, the Bureau proposes, within § 1026.19(e)(3)(iv)(A), a new definition of changed circumstance, which provides that a changed circumstance is an extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction, information specific to the consumer or transaction that the creditor relied upon when providing the disclosures and that was inaccurate or subsequently changed, or new information specific to the consumer or transaction that was not relied on when providing the disclosures.

This proposed definition, most significantly, omits the fourth prong of the existing definition, which provides that: ''[o]ther circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems'' is considered a changed circumstance. The Bureau believes that this prong is not needed because it is covered elsewhere in the definition, and may be contributing to the current industry uncertainty surrounding what constitutes a changed circumstance. However, the Bureau seeks comment on whether this proposal is appropriate, and specifically on whether there are scenarios that should be considered a changed circumstance that would not be captured under any of the other three prongs. Proposed comment 19(e)(3)(iv)(A)–2 provides additional elaboration on this issue and provides several examples of changed circumstances.

Proposed comment 19(e)(3)(iv)(A)–3 discusses 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 explains that 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. However, 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. For example, if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a

[143] *See* § 1024.7(f)(1), (2), (3), and (5).

changed circumstance, under § 1026.19(e)(3)(iv)(A) or (B).

19(e)(3)(iv)(B) Changed Circumstance Affecting Eligibility

Regulation X § 1024.7(f)(2) 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 proposes § 1026.19(e)(3)(iv)(B), which provides 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 explains that if changed circumstances cause a change in the consumer's eligibility for specific loan terms disclosed pursuant to § 1026.19(e)(1)(i) and revised disclosures are provided reflecting such change, the actual amounts paid by the consumer may be measured against the revised estimated disclosures to determine if the actual fee has increased above the estimated fee. The proposed comment also provides several illustrative examples.

19(e)(3)(iv)(C) Revisions Requested by the Consumer

Regulation X § 1024.7(f)(3) 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 agrees that creditors should be able to provide revised estimates that increase charges from the original estimates due to revisions requested by the consumer. The Bureau proposes § 1026.19(e)(3)(iv)(C), which provides 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 illustrates this requirement.

19(e)(3)(iv)(D) Interest Rate Dependent Charges

Regulation X § 1024.7(f)(5) currently 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, provided, however, that when the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The Bureau agrees that disclosures related to the interest rate should be able to fluctuate if the consumer's rate has not been set. The Bureau also agrees that revised disclosures should be provided when the consumer's rate is later set. However, the Bureau is concerned that this provision may be used to harm consumers. There is a possibility that unscrupulous creditors could use this provision to engage in rent-seeking behavior, or to attempt to circumvent the requirements of TILA or RESPA. The Bureau acknowledges these concerns, but the Bureau is unaware of any evidence that creditors are using current Regulation X § 1024.7(f)(5) to harm consumers or to circumvent RESPA. The Bureau believes that the correct balance may be to retain the current regulation while monitoring the market to determine if the regulation is being used to the detriment of consumers. Thus, the Bureau proposes § 1026.19(e)(3)(iv)(D), which provides that a valid reason for reissuance exists when a consumer's rate is set, and also provides that revised disclosures must be provided reflecting the revised interest rate, bona fide discount points, and lender credits. Proposed comment 19(e)(3)(iv)(D)–1 illustrates this requirement. The Bureau also seeks 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.

19(e)(3)(iv)(E) Expiration

Regulation X § 1024.7(f)(4) 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. The Bureau believes that consumers should be able to rely on the estimated charges for a sufficient period of time to permit shopping. The Bureau also believes that, if the consumer does not indicate intent to proceed within the ten-day period, creditors should be able to provide revised disclosures reflecting new charges. The Bureau proposes § 1026.19(e)(3)(iv)(E), which provides 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 illustrates this requirement.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

Regulation X § 1024.7(f)(6) 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 GFE is provided, the loan originator cannot issue a revised 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 GFE. The Bureau believes that the current law under Regulation X should apply to the integrated disclosures. The Bureau agrees that creditors should be able to issue revised disclosures for construction loans where consummation will not occur until well into the future, likely after construction is completed, provided that the consumer is aware of this fact. The Bureau proposes § 1026.19(e)(3)(iv)(F), which provides 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 clarifies 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). For example, a loan to build a home that has yet to be constructed, or a loan to purchase a home on which construction is currently underway, is a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). However, if a use and occupancy permit has been issued for the home prior to the issuance of the Loan Estimate, then the home is not considered to be under construction and the transaction would not be a construction loan to purchase and build a home for the purposes of § 1026.19(e)(3)(iv)(F). This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 21, #2 (''GFE—New construction'').

19(e)(4) Provision of Revised Disclosures

Timing Requirements for Provision of Revised Disclosures

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). 15 U.S.C. 1638(b)(2)(D). Regulation Z implements this requirement in § 1026.19(a)(2)(ii). RESPA does not expressly address timing requirements for the delivery of revised GFEs, but Regulation X generally requires that a revised GFE must be provided within three business days of the creditor receiving information sufficient to establish a reason for revision.[144]

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 ensures that the consumer is kept aware of certain changes during the process, but those changes may occur up to the day of settlement. These different approaches may stem from the underlying purposes of the respective statutes: TILA focuses primarily on the disclosure of high-level measures of the costs imposed by the creditor, such as the APR, while RESPA requires itemized disclosure of all charges associated with the settlement of a federally related mortgage loan and any underlying real estate transaction, regardless of who imposes the charge.

The Bureau believes that the policy goals of both statutes are best served by adopting the Regulation X requirement that revised disclosures be delivered within three business days of the creditor establishing that a valid reason for revision exists. 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, 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 is proposing § 1026.19(e)(4)(i), which provides 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 provides illustrative examples of this requirement.

The Bureau proposes 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, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. This proposed provision is consistent with TILA's purposes in that alerting consumers to significant settlement cost increases as they occur, rather than prior to consummation, increases consumer awareness during the mortgage loan origination process, enabling consumers to avoid the uninformed use of credit. This provision is consistent with section 129B(e) of TILA because failing to inform borrowers of significant settlement cost increases as they occur is not in the interest of the borrower. This also achieves RESPA's purposes because informing consumers of significant settlement cost increases as they occur is a more effective method of advance disclosure of settlement costs than only informing consumers at or shortly prior to consummation. In addition, the proposed regulation is 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 consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers are made aware of significant settlement cost increases as they occur, rather than prior to consummation. It is also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because alerting consumers to significant settlement cost increases during the process will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Prohibition Against Delivering Early Disclosures at the Same Time as Final Disclosures

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 is aware that, in some cases, creditors have provided a revised GFE at the real estate closing along with the RESPA settlement statement. The Bureau is concerned that this practice may be confusing for consumers and may diminish their awareness and understanding of the transaction.

The Bureau recognizes that there are cases in which a consumer may not be 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 will match the actual costs, the Bureau is concerned that consumers may be confused by seemingly duplicative disclosures. The Bureau is also concerned that this duplication may contribute to information overload stemming from too many disclosures, which may, in turn, inhibit the consumer's ability to understand the transaction. Accordingly, proposed § 1026.19(e)(4)(ii) prohibits 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 does not comply with the requirements of proposed § 1026.19(e) if the consumer receives revised versions of the disclosures required under § 1026.19(e)(1)(i) on the same business day as the consumer receives the disclosures required by § 1026.19(f)(1)(i).

Accordingly, the Bureau is proposing § 1026.19(e)(4)(ii), which provides 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 proposes 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). The

[144] ''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).

proposed provision is consistent with TILA's purposes because prohibiting simultaneous provision of a revised Loan Estimate and the Closing Disclosure promotes the informed use of credit by reducing the potential for consumer confusion and information overload. Similarly, this provision achieves RESPA's purposes because the receipt of settlement cost information on a single disclosure is a more effective method of advance disclosure of settlement costs. In addition, the proposed regulation is consistent with Dodd-Frank Act section 1032(a) because consumers will understand the costs, benefits, and risks associated with the mortgage loan and settlement services if the actual terms and costs of the transaction are disclosed on the Closing Disclosure only. It is also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because ensuring that consumers do not receive duplicative disclosures will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Proposed comment 19(e)(4)–2 discusses the requirement that revised disclosures may not be delivered at the same time as the final disclosures. The proposed comment explains that creditors 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 comment also includes illustrative examples of the requirement.

19(f) Mortgage Loans Secured by Real Property—Final Disclosures

As discussed in the preamble text introducing § 1026.19, TILA applies only to creditors and requires, for certain mortgage transactions, creditors to furnish a corrected disclosure to the borrower not later than three business days before the date of consummation of the transaction if the prior disclosed APR has become inaccurate. 15 U.S.C. 1638(b)(2)(A), (D). In contrast, RESPA generally applies to settlement agents and 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. 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 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. § 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. § 1024.10(a).

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. As noted above, although the Dodd-Frank Act amended TILA and RESPA to reflect section 1032(f)'s mandate to integrate the rules under TILA and RESPA, Congress did not reconcile the timing requirements or amend the division of responsibilities between creditor and settlement agent in TILA and RESPA.

19(f)(1) Provision

19(f)(1)(i) Scope

As discussed above, the integrated disclosure mandate requires the Bureau to reconcile what Congress did not. 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 is proposing to integrate the disclosure requirements in TILA section 128 and RESPA section 4 in § 1026.19(f)(1)(i). This section 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 credit transaction. Proposed comment 19(f)(1)(i)–1 provides illustrative examples of this provision.

19(f)(1)(ii) Timing

19(f)(1)(ii)(A) In General

The Bureau must determine when the integrated disclosures must be provided, given that the statutory requirements are not in sync. The Bureau believes that, to comply with both TILA and RESPA, the integrated disclosure must be delivered no later than three days before consummation. The Bureau recognizes that RESPA requires settlement agents to permit borrower inspection of the settlement statement only one business day in advance of settlement, and even then RESPA requires disclosure of only the information to the extent that it is known to the settlement agent. However, the fact that Congress did not alter the timing requirements under RESPA does not imply that the timing requirements under TILA were eliminated. It can be safely presumed that Congress was aware of the requirement that creditors must deliver final disclosures three business days before consummation because Congress created the three-business-day waiting period in 2008. Furthermore, section 1098 of the Dodd-Frank Act, which amends RESPA section 4 to require integrated disclosures, specifically provides that such integrated disclosures shall ''include real estate settlement cost statements.'' This suggests that Congress intended creditors to deliver the settlement cost statements with the TILA disclosures required to be delivered no later than three business days before consummation, even though the language in RESPA section 4 related to settlement agent delivery remains.[145]

The expansion of the items required to be disclosed three business days prior to consummation also supports the Bureau's interpretation. As discussed above, section 1419 of the Dodd-Frank Act also amended TILA by adding section 128(a)(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, which suggests that Congress intended for creditors to disclose information that was traditionally known only to settlement agents in advance of consummation. This amendment, coupled with the fact that Regulation Z requires redisclosure of all changed terms three business days before consummation when the APR is inaccurate, implies that Dodd-Frank requires provision of the integrated

[145] The language in section 4 of RESPA requiring settlement statement delivery one business day in advance of settlement was added in 1976. *See* section 3 of Public Law 94–205 (Jan. 2, 1976). Interpreting the recent amendments in a way that overrides the legacy language is consistent with Supreme Court precedent. *See FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (''[T]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.'').

disclosure no later than three business days before consummation.

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.'' 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 days before consummation. This should 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 are required to obligate themselves. This should also provide consumers with sufficient time to identify and correct errors, discuss and negotiate cost increases, and have the necessary funds available. This may also 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.

In addition, the Bureau is concerned that consumers would not receive the disclosures far enough in advance of consummation to review and understand the transaction under an alternate reading of the statute. As explained above, Regulation Z currently requires creditors to ensure that consumers receive the corrected TIL disclosures no later than three business days prior to consummation. A less stringent rule that allowed consumers to receive the disclosures on the day of consummation would be inconsistent with both TILA and the goals this proposal seeks to achieve. However, the Bureau is also concerned that it would be impractical to require delivery earlier than three business days before consummation. Thus, the Bureau believes that the proposal should provide 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 or hand delivery.

As discussed above, the integrated disclosure mandate requires the Bureau to reconcile what Congress did not. Section 105(a) of TILA authorizes the Bureau to modify and add requirements under certain circumstances, and the Bureau believes 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 proposes § 1026.19(f)(1)(ii)(A), which provides that, except for transactions secured by timeshares, or as provided under § 1026.19(f)(2), the creditor shall ensure that the consumer receives the disclosures no later than three business days before consummation. Proposed comment 19(f)(1)(ii)–1 provides illustrations of this requirement. Proposed comment 19(f)(1)(ii)–2 explains the requirement that consumers must receive disclosures no later than three days in advance of consummation, and provides practical examples illustrating appropriate delivery methods.

The Bureau informed the Small Business Review Panel that the Bureau was considering requiring reissuance if the APR increased by more than ⅛ of 1 percent, certain loan features were added, or if the amount needed to close increased beyond a certain tolerance. *See* Small Business Panel Review Report at 11. While this proposal includes the tolerance for the amount needed to close and would require reissuance if certain loan features are added, this proposal does not include an additional APR tolerance for reissuance. Based on further review, the Bureau believes that the $100 amount needed to close tolerance provides sufficient flexibility, thereby making an additional APR tolerance unnecessary. The Bureau was also concerned that the additional APR tolerance would harm consumers by allowing potentially large costs to change immediately prior to closing. Importantly, the Bureau believes that this proposal is substantially similar to the possibilities discussed with the Small Business Review Panel. In virtually all cases where the APR increases by more than ⅛ of 1 percent, the amount needed to close would also have increased by more than $100, requiring re-disclosure. However, the Bureau solicits comment on whether the use of an APR tolerance would provide any additional benefits.

The Bureau recognizes that this modification would require redisclosure three days before consummation in circumstances that are not currently required under Regulation Z. This proposal removes the condition, provided for under TILA section 128(b)(2)(D), that corrected disclosures need not be delivered if the estimated APR included in the early TILA disclosure is accurate at the time of consummation. The Bureau has received extensive feedback indicating that APR estimates included in the early TILA disclosures are so rarely accurate that most creditors provide corrected disclosures as a standard business practice, instead of analyzing the accuracy of the disclosed APR. Thus, the Bureau believes that the benefit afforded by the condition under TILA section 128(b)(2)(D) is more illusory than real, and may, in fact, impose an unnecessary compliance burden on industry. In addition, the Bureau suspects that the expansion of the list of items included in the APR, pursuant to the proposed amendments to § 1026.4, may make it less likely that a creditor will be able to accurately estimate the APR within three business days of application. Therefore, this proposal does not condition disclosure prior to consummation on APR accuracy.

These proposals are made 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 proposed modifications are appropriate. The proposal may 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. This provision is 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 has also considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the proposed rules and interpretations are appropriate. The proposal has the potential to 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.

Proposed § 1026.19(f)(1)(ii)(A) is 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 than 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 consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three 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 proposed modifications are appropriate. The proposal may improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three days in advance of consummation. The proposal may also be in the interest of consumers and in the public interest because the proposal 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 this 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. *See* id at 29. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau solicits comment on alternative approaches, including any that can minimize the burden on industry, especially small entities, while serving the needs of consumers and effectively integrating the disclosures, as required by the Dodd-Frank Act.

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, as defined by 11 U.S.C. 101(53D), from the three-day requirement.[146] Accordingly, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes § 1026.19(f)(1)(ii)(B), which states 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 paragraph (f)(1)(i) of this section as soon as reasonably practicable, but no later than consummation. This proposed regulation carries 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, this proposed regulation 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).

Proposed comment 19(f)(1)(ii)–3 explains that for loans secured by timeshares, as defined under 11 U.S.C. 101(53D), § 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 includes illustrative examples of this requirement.

19(f)(1)(iii) Delivery

Section 128(b)(2)(E) of TILA 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* § 1026.19(a)(1)(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. § 1024.10(b), (c).

To establish a consistent standard for the integrated Closing Disclosure, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes to adopt § 1026.19(f)(1)(iii), which provides 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.

Proposed comment 19(f)(1)(iii)–1 explains 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. 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 contains illustrative examples. Proposed comment 19(f)(1)(iii)–2 clarifies that the presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. However, creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). This proposed comment also contains illustrative examples.

The Bureau recognizes 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 creates a presumption that the disclosures are received three business days after they are mailed or delivered to the address provided by the consumer. While the current rule may be appropriate for the disclosures provided under § 1026.19(a), the Bureau is concerned that the current rule may not be appropriate for the integrated Closing Disclosure, which contains much more information than the final TILA disclosures subject to the current rule, and therefore will require more time to review and understand. 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. However, the Bureau solicits feedback regarding whether the proposed rules will create uncertainty regarding compliance. The Bureau also solicits comment on whether the rules should be analogous to the current rule under § 1026.19(a)(2), which uses ''deem'' instead of ''presume.'' Finally, the Bureau seeks feedback regarding

[146] Mortgage Disclosure Improvement of 2008, Public Law 110–289, Title V, § 2502(a)(6), 122 Stat. 2654, 2857 (July 30, 2008); 15 U.S.C. 1638(b)(2)(G).

whether § 1026.19(a) should be modified to reflect § 1026.19(f)(1)(iii), if the final rule adopts the presumption of receipt.

This proposed provision is consistent with section 105(a) of TILA in that it may 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. This proposed provision is also consistent with section 19(a) of RESPA because it has the potential to ensure more effective advance disclosure of settlement costs by requiring creditors to make sure that the disclosures are delivered to the address specified by the consumer three business days before consummation. In addition, the proposal is consistent with section 1405(b) of the Dodd-Frank Act because the proposal may 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 address specified by the consumer three business days in advance of consummation. Ensuring that consumers receive disclosures in a timely manner is also in the interest of consumers and in the public interest because the proposal may allow consumers to receive the disclosure early enough to question and understand their mortgage loan transaction.

19(f)(1)(iv) 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.

Although the Bureau understands that waivers based on a bona fide personal financial emergency are rare, this exception serves 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, the Bureau is proposing § 1026.19(f)(1)(iv), which allows a consumer to waive the three-business-day waiting period in the event of a bona fide personal financial emergency. In addition, the Bureau seeks comment on the nature of waivers based on bona fide personal financial emergencies. The Bureau also seeks 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(f)(1)(iv)–1 states 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 is modeled after comment 19(a)(3)–1, which is based on the same statutory text, and is consistent with commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage transactions. The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. 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. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

Alternative—Proposed 19(f)(1)(v) Settlement Agent

As discussed above, neither TILA nor Regulation Z contain requirements related to settlement agents, but RESPA and Regulation X generally apply to settlement agents with respect to closing disclosure requirements. 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. The Dodd-Frank Act amended TILA and RESPA to reflect section 1032(f)'s mandate to integrate the rules under TILA and RESPA, but Congress did not reconcile the division of responsibilities between creditor and settlement agent in TILA and RESPA.

The Bureau recognizes that people who conduct settlements, such as settlement agents and closing attorneys, play a valuable role in the real estate settlement process. The Bureau also believes that settlement agents may be able to assist consumers with issues that arise during a real estate settlement as, or perhaps more, effectively than creditors. However, the Bureau is concerned that, in the context of providing disclosures, settlement agents may not be able to fulfill the obligations imposed by TILA. The Bureau is also concerned that consumers will receive duplicative, inaccurate, or unreliable disclosures if the responsibility to provide disclosures is divided.

As discussed above, proposed § 1026.19(f)(1)(i) makes the creditor solely responsible for the provision of the disclosures required by § 1026.19(f). Although this may be the appropriate solution, an alternative approach that permits creditors and settlement agents to split responsibility may also be appropriate. This alternative would require the creditor and settlement agent to agree on a division of responsibilities regarding the delivery of the disclosures. Accordingly, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes alternative § 1026.19(f)(1)(v), which provides 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. As discussed under proposed alternative comment 19(f)(1)(v)–3 below, this proposed regulation is not intended to relieve the creditor's responsibility under TILA. The creditor would remain responsible for ensuring that disclosures are provided in accordance with the requirements of § 1026.19(f). Disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) satisfy the creditor's obligation under § 1026.19(f)(1)(i). As discussed under proposed alternative comment 19(f)(1)(v)–3 below, this proposed regulation is not intended to relieve the creditor's responsibility under TILA. The creditor would remain responsible for ensuring that disclosures are provided in accordance with the requirements of § 1026.19(f). Disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) satisfy the creditor's

obligation under § 1026.19(f)(1)(i). In addition, the Bureau invites 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.

The Bureau informed the Small Business Review Panel that the Bureau was considering an alternate proposal where the lender would be responsible for preparing the TILA-required information, the settlement agent would be responsible for preparing the RESPA-required information, and the lender and settlement agent would be jointly responsible for providing the consumer with an integrated Closing Disclosure three business days before closing. *See* Small Business Panel Review Report at 12. While the alternate proposal in this proposed rule permits shared responsibility, it does not delineate responsibility between RESPA and TILA content. Based on further review, the Bureau determined that such a division would be impracticable. There is significant overlap between the disclosures required by the statutes, and creditors and settlement agents have access to both RESPA and TILA information. The Bureau believes that the better approach is to permit shared responsibility, but allow creditors and settlement agents to decide how to most effectively divide that responsibility. However, the Bureau solicits comment on the benefits and costs associated with this alternative, especially regarding any impact on small businesses that was not raised during the Small Business Review process.

This proposed regulation carries out the purposes of TILA because requiring 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. This proposed regulation could also achieve the purposes of RESPA by resulting in more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA. This proposed regulation could also 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).

Proposed alternative comment 19(f)(1)(v)–1 clarifies 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 becomes 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 creditor and settlement agent must effectively communicate to ensure timely and accurate compliance with the requirements of this section.

Proposed alternative comment 19(f)(1)(v)–2 clarifies 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 clarifies that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f), provides 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 includes illustrative examples.

Proposed alternative comment 19(f)(1)(v)–3 explains 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. For example, 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 clarifies that the creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures. For example, 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 creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. 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 alternative comment 19(f)(1)(v)–4 clarifies that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). However, 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 alternative comment also includes illustrative examples.

19(f)(2) Subsequent Changes

There are several circumstances where the strict application of the three-day-waiting period required by § 1026.19(f)(1)(ii) may operate to the consumer's detriment. The Bureau seeks to provide flexibility where doing so would benefit the consumer. Thus, the Bureau is proposing § 1026.19(f)(2), which provides that creditors need not comply with the timing requirements in § 1026.19(f)(1)(ii) if the disclosure provided pursuant to § 1026.19(f)(1)(i) is subsequently revised for any of the reasons described in § 1026.19(f)(2)(i) through (v).

The Bureau proposes § 1026.19(f)(2) pursuant to its authority under sections 105(a) of TILA and 19(a) of RESPA. As explained in more detail below, the Bureau believes that these proposed regulations 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.

19(f)(2)(i) Changes Due to Consumer and Seller Negotiations

The Bureau recognizes that sellers and buyers frequently 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. These negotiations may affect items included on the Closing Disclosure, which, under the proposal, must be delivered three days prior to consummation. The Bureau believes that the regulations should provide flexibility to address this common occurrence, so that these changes do not trigger an additional three-day-waiting period. Thus, pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.19(f)(2)(i), which states that if, after the creditor provides the consumer with the disclosures, the consumer and the seller agree to make changes to the transaction that affect

items disclosed, the creditor shall deliver revised disclosures reflecting such changes at or before consummation. Proposed comment 19(f)(2)(i)–1 provides illustrative examples of this requirement. This proposed regulation will carry out the purposes of TILA by ensuring meaningful disclosure of credit terms and enable the informed use of credit by enabling buyers and sellers to conduct final negotiations informed by the final credit terms provided in the disclosures, and by ensuring that the disclosures can be modified to reflect such negotiations immediately prior to the real estate closing, consistent with section 105(a) of TILA. This will also help to achieve the purposes of RESPA by enabling 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, by enabling buyers and sellers to conduct final negotiations informed by the final credit terms provided in the disclosures, and by ensuring that the disclosures can be modified to reflect such negotiations immediately prior to the real estate closing, consistent with section 19(a) of RESPA.

19(f)(2)(ii) Changes to the Amount Actually Paid by the Consumer

The Bureau does not believe that small miscalculations or minor changes to the transaction should result in closing delays. Therefore, the Bureau proposes § 1026.19(f)(2)(ii), which provides 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 believes that $100 may be the correct tolerance based on feedback received regarding the items most likely to change prior to consummation. The Bureau seeks comment on whether the threshold to accommodate small miscalculations or minor changes prior to consummation should be higher or lower than the proposed $100.

The Bureau proposes § 1026.19(f)(2)(ii) pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA. This proposed regulation will carry out the purposes of TILA by ensuring meaningful disclosure of credit terms and enable the informed use of credit by permitting minor underestimation in the final amount paid by the consumer, which will lessen the likelihood that creditors will overestimate the final amount paid by the consumer, consistent with section 105(a) of TILA. This will also help to achieve the purposes of RESPA by enabling 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 by permitting minor underestimation in the final amount paid by the consumer, which will lessen the likelihood that creditors will unnecessarily increase the cost of settlement services by overestimating the final amount paid by the consumer, consistent with section 19(a) of RESPA.

Proposed comment 19(f)(2)(ii)–1 discusses the requirements of § 1026.19(f)(2)(ii), which states 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 includes illustrative examples of these requirements.

Proposed comment 19(f)(2)(ii)–2 clarifies 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 § 1026.19(f)(2)(ii) limits 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 may vary by more than $100, to the extent permitted by § 1026.19(f)(2)(i). This proposed comment also includes illustrative examples of this provision.

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

The Bureau is aware that some costs are not known with absolute certainty until the documents are recorded. For example, it is possible that 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 regulations need to provide sufficient flexibility to accommodate issues, such as these, when such changes are caused by a government entity. Thus, pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.19(f)(2)(iii), which provides 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 revised 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. This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive correct disclosures of the final terms and costs of the transaction, consistent with section 105(a) of TILA. This proposed regulation is also made pursuant to the Bureau's authority to implement section 4 of RESPA, consistent with section 19(a) of RESPA. Proposed comment 19(f)(2)(iii)–1 clarifies 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 provides several illustrative examples. The Bureau also solicits 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.

19(f)(2)(iv) Changes Due to Clerical Errors

Regulation X § 1024.8(c) provides that an inadvertent or technical error in completing the HUD–1 or HUD–1A shall not be deemed a violation of section 4 of RESPA if a revised HUD–1 or HUD–1A is provided within 30 calendar days after settlement. Section 130 of TILA has a similar provision, with respect to civil liability, 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.[147] There is no similar provision in RESPA or Regulation Z. Pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA, the Bureau proposes

[147] ''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).

§ 1026.19(f)(2)(iv), which provides that a creditor does not violate § 1026.19(f)(1)(i) if the 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. Proposed comment 19(f)(2)(iv)–1 clarifies that clerical errors are errors such as typographical errors, or other minor errors that do not affect the amount owed by the consumer. This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive correct disclosures consistent with section 105(a) of TILA. This proposed regulation will also 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 consumers' records correctly reflect the terms, payments, and entities involved in the transaction, consistent with section 19(a) of RESPA. The Bureau also solicits 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.

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Neither RESPA nor Regulation Z expressly require 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. Section 1024.7(i) of Regulation X, however, provides that a lender or mortgage broker violates section 5 of RESPA if any charges at settlement exceed the charges listed on the 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 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, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes § 1026.19(f)(2)(v), which 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 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. This proposed regulation 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 will also 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.

Proposed comment 19(f)(2)(v)–1 discusses refunds related to the good faith analysis. The proposed comment explains 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) of this section, 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 includes illustrative examples of these requirements.

19(f)(3) Charges Disclosed

19(f)(3)(i) Actual Charge

Neither TILA nor Regulation Z addresses the amounts paid to settlement service providers for settlement services. However, section 4 of RESPA provides that the settlement statement shall contain the amount imposed upon the consumer in connection with the settlement. 12 U.S.C. 2603(a). Section 1024.8(b)(1) of Regulation X provides the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the HUD–1, or by the borrower on the HUD–1A. 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), the Bureau proposes § 1026.19(f)(3)(i), which provides 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).

This proposed regulation will 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 proposed regulation implements the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a). This will also 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. This will also 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 proposed regulation will also 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).

Proposed comment 19(f)(3)(i)–1 explains 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. 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.

19(f)(3)(ii) Average Charge

As part of the 2008 RESPA Final Rule, HUD adopted a limited exception to the requirement that the settlement statement shall contain the amount imposed on the consumer, which shall not be more than the amount received by the settlement service provider. 12 U.S.C. 2603(a), 2607(b). 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 6 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 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.*

Pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA, the Bureau proposes § 1026.19(f)(3)(ii), which provides 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. 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).[148] In addition to this authority, the Bureau finds that proposed § 1026.19(f)(3)(ii) will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. This proposed regulation will also 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).

Proposed comment 19(f)(3)(ii)–1 explains 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. 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. 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 explains how an appropriate period of time, geographic area, and type of loan may be defined, and provides 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 provides 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 provides practical examples illustrating the uniform use requirement.

Proposed comment 19(f)(3)(ii)–4 illustrates 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 discusses 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 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. 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 believes that the use of average-charge pricing promotes greater reliability for consumers. Therefore, the Bureau seeks to address this concern to facilitate the adoption of average-charge pricing. Proposed comment 19(f)(3)(ii)–5 addresses this issue and discusses the ways in which a person may comply with this requirement. A person may refund the excess amounts collected or may factor in the excesses when determining the average charge for the next period. A person may also comply by establishing a rolling monthly period of re-evaluation. 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 explains 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 is concerned that prospective adjustments may not be practicable in the context of determining average charges. Accordingly, the Bureau seeks comment on whether such a provision is appropriate.

Proposed comment 19(f)(3)(ii)–7 discusses 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

[148] *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).

clarifies that an average charge may not be used where prohibited by any applicable State or local law. Proposed comment 19(f)(3)(ii)–9 explains how the recordkeeping requirements in § 1026.25 apply to the documents related to the calculation of average charge.

19(f)(4) Transactions Involving a Seller

Neither TILA nor Regulation Z contain requirements related to the seller. 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 HUD–1 to any seller at or before the settlement, unless the borrower waives the right to delivery of the HUD–1 at or before settlement, in which case the HUD–1 shall be mailed to the seller as soon as practicable after settlement. § 1024.10(b) and (c). 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), the Bureau proposes § 1026.19(f)(4)(i), (ii), and (iii). Proposed § 1026.19(f)(4)(i) provides 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) provides that the person conducting the settlement shall provide these disclosures no later than the day of consummation. 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) provides 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).

This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The proposed regulation implements the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a). This proposed regulation will also 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). Receipt of the integrated disclosures in accordance with this proposed regulation will also 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 proposed regulation, by requiring sellers to receive the integrated disclosure, will also improve 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).

Proposed comment 19(f)(4)(ii)–1 explains 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. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, 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 provides illustrative examples of this requirement.

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. 12 U.S.C. 2610. Although Regulation Z does not contain a similar requirement, § 1024.12 of Regulation X implements RESPA's requirement. Pursuant to its authority under sections 105(a) of TILA and 19(a) of RESPA, the Bureau proposes § 1026.19(f)(5), which 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 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. This proposed regulation will 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. This proposal is also made pursuant to the Bureau's authority to implement section 10 of RESPA, consistent with section 19(a) of RESPA. This proposed regulation will also 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.

19(g) Special Information Booklet at Time of Application

Section 1024.6 of Regulation X contains the provisions related to the Special Information Booklet, which is required by section 5 of RESPA. 12 U.S.C. 2604. The Bureau plans to update the booklet consistent with the amendments to section 5 of RESPA in section 1450 of the Dodd-Frank Act and to reflect the integrated disclosures, once those disclosures are finalized. Pursuant to its authority under TILA section 105(a) and RESPA section 19(a), the Bureau proposes § 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 also solicits feedback on whether the CHARM booklet, required under § 1026.19(b)(1), should be incorporated into the Special Information Booklet. This proposed provision is 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. This proposed regulation 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.

Proposed comment 19(g)(1)–1 provides 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 Bureau may also choose to permit the forms or booklets of other Federal agencies, 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 clarifies 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 explains 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). Provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). 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. Proposed comment 19(g)(2)–2 clarifies that the special information booklet may be translated into languages other than English.

Section 1026.22 Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

The Bureau is proposing conforming amendments to § 1026.22 to reflect the fact that proposed § 1026.38(o)(2) sets forth finance charge tolerances for mortgage transactions subject to § 1026.19(f), as discussed below. The tolerances set forth in § 1026.18(d)(1) continue to apply to closed-end transactions that are not subject to proposed § 1026.19(f). Accordingly, the Bureau proposes to revise § 1026.22(a)(4) and (5) and comment 22(a)(4)–1 to add references to § 1026.38(o)(2).

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 is proposing to exercise its authority under TILA section 105(a) to revise the comment to conform with the additional forms of repayment term disclosures that may apply to various types of mortgage transactions under this proposal. Proposed comment 24(d)(2)–2 clarifies 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 in §§ 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 use of either the payment schedule described in § 1026.18(g) or the interest rate and payments summary table described in § 1026.18(s) to state the terms of repayment can be provided for transactions secured by real property or a dwelling under comment 24(d)(2)–2. In light of the existence of the interest rate and payment summary table described in § 1026.18(s) and the addition of the projected payments table described in §§ 1026.37(c) and 1026.38(c) of this proposed rule, the Bureau believes that the format of disclosure applicable to a particular transaction is also the most appropriate format for advertising purposes. Comment 24(d)(2)–2 would therefore be revised to clarify that disclosing the terms of repayment in the interest rate and payment summary table and the projected payment tables described in § 1026.18(s) or §§ 1026.37(c) and 1026.38(c), as applicable, satisfies the requirements in § 1026.24(d)(2)(ii). These revisions would also make clear that the payment schedule described in § 1026.18(g) is not the only permissible disclosure under § 1026.24(d)(2)(ii).

Section 1026.25 Record Retention

As discussed below, the Bureau proposes to amend § 1026.25 to apply the recordkeeping requirements currently 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 proposes to amend § 1026.25(a) to exempt the requirements of §§ 1026.19(e) and (f). Instead, the record retention requirements for compliance with these sections will be established under a new § 1026.25(c)(1).

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 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 proposes 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 recognizes that extending the record retention requirement from two years, as currently provided in Regulation Z, to three years may increase costs. However, the Bureau is unaware of any issues related to complying with the three year period currently required by Regulation X. Creditors may be able to use existing recordkeeping systems to maintain the integrated disclosure data at no additional cost. Additionally, several sections of RESPA are subject to a three year statute of limitations.[149] Adopting a document retention period of less than three years may affect legal actions brought under RESPA. Thus, it may be appropriate to require creditors to maintain records related to compliance for three years, as opposed to the two year requirement currently under Regulation Z.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.25(c)(1)(i), which states 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

[149] ''[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.

required to be made, or the date the action is required to be taken. The Bureau believes that this proposed modification will ensure that records associated with the integrated disclosures are 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 also solicits comment on whether the three year period is 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.

Proposed comment 25(c)(1)(i)–1 applies guidance currently applicable under § 1026.25(a) to proposed § 1026.25(c). The proposed comment clarifies that the creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, 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 cost under § 1026.19(f)(3)(ii). Proposed comment 25(c)(1)(i)–2 provides a cross-reference to § 1026.19(e)(1)(ii), which imposes responsibilities on mortgage brokers in some situations and may implicate § 1026.25(c).

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 proposes to adopt the five-year requirement. 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 current five-year recordkeeping requirement under Regulation X has been in effect since 1992.[150] The Bureau is unaware of any problems caused by the five year requirement and does 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, it appears that requiring creditors to retain copies of the Closing Disclosure for five years is appropriate.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.25(c)(1)(ii). Proposed § 1026.25(c)(1)(ii)(A) states 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 believes that this proposed modification will ensure that records associated with the integrated disclosures are kept long enough to facilitate compliance with both TILA and RESPA, which is necessary to both prevent circumvention of and facilitate compliance with TILA. The proposed recordkeeping requirement will also enable accurate supervision, which will result in the more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA. Proposed § 1026.25(c)(1)(ii)(B) provides 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 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. Such owner or servicer shall retain such disclosures for the remainder of the five-year period. Proposed § 1026.25(c)(1)(ii)(C) provides that the Bureau shall have 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 recognizes that this proposal 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. However, the Bureau believes that the current requirement provides 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 solicits feedback regarding whether it is 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 requests feedback on the additional costs that would result from such a requirement.

25(c)(1)(iii) Electronic Records

Issues Related to Adopting a Standard, Machine Readable, Electronic Data Format. Neither TILA nor RESPA address electronic recordkeeping. Regulation Z permits, but does not require, electronic recordkeeping. 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'').

The Bureau has sought information regarding the costs of keeping records in an electronic, machine readable format. ''Machine readable'' means 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, are not machine readable for purposes of this proposal. Based on these discussions, including information learned from the Small Entity Representatives participating in the Small Business Review Panel process, the Bureau recognizes that requiring records in an electronic, machine readable format will impose new costs on industry. Industry would incur costs for either acquiring a system to create records in electronic, machine readable format, or for modifying their current systems to use a standard format required by regulation. *See* Small

[150] 57 FR 49600, 49607 (Nov. 2, 1992).

Business Review Panel Report at 30. However, feedback provided to the Small Business Review Panel indicates that creditors currently rely on electronic systems for most aspects of the mortgage loan origination process, which include electronic record creation and storage. *See id.* Thus, any new costs caused by a machine readable recordkeeping requirement would be limited to the up-front costs of upgrading existing computer systems and additional, ongoing data storage costs.

In contrast, the benefits of keeping records in machine readable format may be significant. A prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to efficiency gains associated with a standardized data format. Information received by the Bureau suggests that creditors, mortgage brokers, title companies, investors, and other mortgage technology providers use systems with proprietary data formats. As a result, data must be translated between formats as it is transmitted from one point to another throughout the mortgage loan origination process. A standard electronic record format may eliminate these multiple data formats, thereby increasing efficiency in the origination process, reducing industry costs in the long term, and reducing costs to consumers. Also, the Bureau is aware that many firms currently face significant internal costs for maintaining multiple internal technological systems. A single data format may lower overall and long-term costs by enabling creditors to migrate from older data formats to a single, standard data format.

Other benefits may be realized from a standard, electronic, machine readable format. A standard format may facilitate innovation in the financial services industry by making it easier for technology companies to create new programs that improve the mortgage origination process and lower industry costs, instead of tailoring programs to each firm's unique proprietary data format. A standard machine readable format may also facilitate industry adoption of mortgage documentation technology. Such developments would reduce industry's reliance on paper files, which would lower ongoing costs while reducing the paperwork burden on both industry and consumers. Furthermore, electronic, machine readable records may allow regulators to monitor some aspects of compliance remotely. Remote examinations may benefit creditors by easing the burden associated with devoting staff time and resources to on-site examinations. All of these benefits may reduce industry cost and burden in the long run, thereby reducing costs to consumers as well.

The Bureau believes that the benefits of a standard, machine readable electronic data format may outweigh the costs associated with adopting and maintaining such a format. Thus, pursuant to its authority under section 105(a) of TILA, the Bureau proposes § 1026.25(c)(1)(iii), which provides that a creditor shall retain evidence of compliance in electronic, machine readable format. The Bureau believes that this proposed requirement will ensure that records associated with the integrated disclosures are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA. This proposed regulation may also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA keep records in a standard format. Proposed comment 25(c)(1)(iii)–1 clarifies that the requirements of § 1026.25(c)(1)(iii) are in addition to any other formats that may be required by administrative agencies responsible for enforcing the regulation. The Bureau solicits comment on this approach, including the costs associated with such a requirement.

As discussed in the Initial Regulatory Flexibility Analysis, section VIII.B.4.b below, the proposed electronic recordkeeping requirement may not be appropriate for certain classes of entities, such as small creditors that do not currently have such electronic filing systems or use vendor software. The upfront and ongoing costs of such a requirement on small creditors may outweigh any benefits. However, the Bureau does not have sufficient data to determine whether and which small creditors should be exempt from the requirements. Accordingly, pursuant to its authority under section 105(f) of TILA, the Bureau proposes that, as an alternative to requiring electronic records, that a class of entities consisting of small creditors be exempted based on either entity size or the number of loans originated.

The Bureau has considered the factors in TILA section 105(f) and believes that an exception could be appropriate under that provision if the costs imposed on small entities outweigh the benefits to consumers. In such circumstances, an exemption would be appropriate for all affected borrowers who receive mortgage loans from small entities, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, an exemption would be appropriate for all affected loans issued by exempt small entities, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, on balance, the proposed exemption would simplify the credit process for small entities without undermining the goal of consumer protection or denying important benefits to consumers. The Bureau recognizes that its exemption and exception authorities apply to a class of transactions, and proposes to apply these authorities to the loans covered under the proposal of the entities proposed for potential exemption.

Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits comment on whether a small business exemption is appropriate, whether such small business exemption should be based on entity size or the number of loans originated, and the appropriate exemption threshold in terms of institution size or the number of loans originated, respectively. The Bureau solicits feedback on whether such an exemption for depository institutions should be different than an exemption for non-depository institutions. The Bureau also solicits feedback on small business' current technology costs, and how such costs might be affected by an electronic recordkeeping requirement.

Based on the Bureau's discussions with industry regarding machine readable data formats, the Bureau believes that XML may be the most appropriate format for electronic recordkeeping. However, the Bureau solicits comment on the costs and challenges associated with adopting an XML format. The Bureau also solicits feedback on other data formats that may be more appropriate than XML.

Smart Disclosure. ''Smart disclosure'' generally refers to a requirement that data be kept in standard, machine readable format that is also available to the public. In the context of mortgage loans, any regulation implementing smart disclosure would require creditors to provide consumers with data related to the loan origination process. Smart disclosure can facilitate intelligent decision-making by consumers and encourage innovation. For example, if consumers were provided with Loan Estimates in electronic format, computer programs and applications may be developed to allow consumers to compare Loan Estimates between different creditors. Or, programs may be developed that assist consumers in assessing the ongoing costs, risks, and affordability of a single Loan Estimate for the individual consumer.

The Bureau recognizes that smart disclosures may encourage the informed use of credit and promote innovation in the consumer financial services industry. While the Bureau supports these goals, the Bureau is not proposing a smart disclosure requirement at this time. The Bureau intends to continue monitoring the consumer financial services market and will revisit this issue if, in the future, the Bureau determines that such a requirement is appropriate.

Section 1026.28 Effect on State Laws

TILA preempts State laws to the extent of their inconsistency with that 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 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) 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.[151] 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 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.[152] The specific procedures for requesting a State law preemption determination are set forth in § 1026.28(c) and appendix A to part 1026. 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 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 notes 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 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. 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 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

[151] 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).

[152] 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.

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 noted 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.

Furthermore, 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. 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.

Accordingly, Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 19(a) provide the Bureau with authority to reconcile the provisions of TILA and RESPA to carry out the integrated disclosure requirement. Based on such authority and the Bureau's authority under TILA section 105(a) and RESPA section 19(a) to make rules consistent with the purposes of those statutes, the Bureau is proposing 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. By applying the Regulation Z State law preemption provision to any State law preemption question arising with respect to the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38, this requirement encompasses all closed-end consumer credit transactions secured by real property that are covered by the proposed rule, regardless of whether they are independently subject to RESPA. However, § 1024.13 applies to State law preemption questions arising with respect to other aspects of RESPA and Regulation X, including the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors.

To effectuate this change, the Bureau is proposing two modifications to § 1026.28 and its associated commentary. First, the proposed rule modifies § 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 shall be made in accordance with § 1026.28 and not Regulation X § 1024.13. Second, the proposed rule adds 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 includes a creditor, a mortgage broker, or a closing agent, as applicable. This change coincides with the alternative proposed § 1026.19(f)(1)(v), which permits the closing agent to deliver the Closing Disclosure in place of the creditor. If the alternative permitting the closing agent to deliver the Closing Disclosure is not adopted, the closing agent reference in the proposed edit to comment 28(a)–1 will not be adopted.

The Bureau notes that proposed § 1026.28 and associated commentary do not incorporate the language in RESPA section 18 and Regulation X § 1024.13(b) providing that the Bureau may not determine that any State law is inconsistent with any RESPA provision if the Bureau determines that such law or regulation gives greater protection to the consumer. However, the Bureau believes that proposed § 1026.28 is consistent with RESPA section 18. Specifically, a State disclosure is likely to confuse consumers if it uses the same term to represent a different amount or a different meaning than, or if it requires the use of a different term to describe the same item as, the integrated mortgage disclosures developed in this rulemaking through extensive consumer testing. Accordingly, for purposes of this rulemaking, the Bureau believes that such State disclosures generally do not provide greater protection for consumers.

Nevertheless, the Bureau intends to take a cautious case-by-case approach to evaluating inconsistency under RESPA section 18. The Bureau also intends to consult with other Federal agencies, as appropriate, within the scope of RESPA concerning any evaluations of inconsistency under RESPA section 18. Furthermore, the Bureau emphasizes that nothing in this proposed rule is intended to preempt State laws that offer greater substantive consumer protections than those provided under sections 4 and 5 of RESPA [153] and §§ 1026.19(e) and (f), 1026.37, and 1026.38 (*e.g.,* a State law imposing stricter limits on closing cost increases or requiring disclosures of the final closing costs seven days before consummation). A more protective State law would not be inconsistent with such RESPA and Regulation Z provisions, and therefore would not be preempted by § 1026.28, because a creditor's compliance with the more protective State law would also satisfy the requirements of such RESPA and Regulation Z provisions.

The Bureau believes that the proposed revisions to the regulatory text and commentary to § 1026.28 effectively specify whether the Regulation Z or RESPA State law preemption provision applies 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 proposed §§ 1026.19(e) and (f), 1026.37, and 1026.38.

Section 1026.29 State Exemptions

TILA has several provisions that permit the Bureau to grant State exemptions from certain TILA disclosure provisions. Section 111(a)(2) allows the Bureau, upon its own motion

[153] As discussed above, proposed revised § 1026.28 and associated commentary do not govern State law preemption questions arising under the RESPA section 5(c) requirements for provision of a list of certified homeownership counselors.

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 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.[154] 15 U.S.C. 1633.

Regulation Z § 1026.29 and appendix B to part 1026 implement the TILA State exemption provisions.[155] 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 Federal Reserve 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 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 part 1026. 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 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. 12 U.S.C. 2616; 12 CFR 1024.13.

As noted above, sections 1032(f), 1098, and 1100A of the Dodd-Frank Act require the Bureau to propose for public comment, 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 proposed rule must reconcile the State exemption provisions.

Accordingly, pursuant to its authority under Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 19(a) as well as its authority under TILA section 105(a) and RESPA section 19(a) to make rules consistent with the purposes of those statutes, the Bureau is proposing to require that the TILA State exemption provision apply to transactions subject to proposed § 1026.19(e) and (f) (*i.e.,* all closed-end consumer credit transactions secured by real property, other than a reverse mortgage). By applying the TILA State exemption provision to transactions subject to § 1026.19(e) and (f), rather than the RESPA State preemption provision (which is silent as to the granting of State exemptions under RESPA), this requirement would cover all closed-end consumer credit transactions secured by real property that are covered by the proposed rule, including those subject to RESPA. The Bureau believes this is consistent with the intent of TILA's State exemption provision and the integrated disclosure mandate in Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 19(a) because it allows States to maintain their existing exemptions so long as consumers receive disclosures and protections that are substantially similar to those in the proposed rule. Furthermore, using the TILA State law exemption provision for transactions subject to § 1026.19(e) and (f) will facilitate compliance with the disclosure requirements of TILA and RESPA and promote the informed use of credit and more effective advance notice of settlement costs since creditors, consistent with TILA section 105(a) and RESPA section 19(a), by applying a consistent standard to those transactions.

To effectuate this change, the Bureau is proposing two substantive modifications to the commentary to § 1026.29, in addition to relabeling some of the section numbering and lettering. First, proposed revised comment 29(a)–2 modifies the guidance regarding the ''substantially similar'' standard set forth in § 1026.29(a)(1) (*i.e.,* one of the two preconditions to the granting of an exemption). Proposed revised comment 29(a)–2 clarifies 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. This means that, 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 states that, although RESPA and Regulation X do not provide procedures

[154] 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).

[155] 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.

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 states 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, may 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 mandate delivery of the integrated mortgage disclosures required by the Dodd-Frank Act and implemented by the proposed rule.

The Bureau believes that the proposed revisions to the commentary to § 1026.29 effectively reconcile the conflicting TILA and RESPA provisions by clarifying the standards for the Bureau's granting of exemptions from certain relevant TILA and RESPA provisions going forward. The proposed revisions also clarify how compliance with sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) may be accomplished with respect to transactions subject to the previously-granted TILA exemptions in light of the Dodd-Frank Act's mandate to integrate the mortgage disclosures under TILA and sections 4 and 5 of RESPA. Finally, the proposed revisions do not change the existing language in comment 29(a)–4 and appendix B to part 1026 reserving the Bureau's right to make and publish any contrary determination regarding State exemptions previously granted by the Federal Reserve Board and, more generally, to revoke State exemptions if the standards for granting them are no longer met.

The Bureau understands these proposed changes will likely require some of the five States 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.[156] This is 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 hereby solicits comment on the amount of time that will be needed for these States to change their laws and/or regulations.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

Proposed § 1026.37 sets forth the required content of the integrated Loan Estimate disclosures, required by proposed § 1026.19(e) to be provided to a consumer within three business days of the creditor's receipt of the consumer's application.

As discussed above, the Loan Estimate integrates 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 believes the three-page Loan Estimate integrates at least seven pages of disclosures. Specifically, the Loan Estimate incorporates: (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 Loan Estimate incorporates 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 absence of the Bureau's integration of the early TILA disclosure and the RESPA GFE, some 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.

Proposed § 1026.37 provides that the information set forth in § 1026.37(a) through (n) shall be disclosed ''as applicable.'' The Bureau is proposing a new comment 37–1 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.''

As discussed below, proposed § 1026.37(o) provides rules for the form of the disclosures required by § 1026.37(a) through (n). Proposed comment 37–2 directs creditors to § 1026.37(o) and its commentary for guidance on format and permissible modifications to the form of the disclosures.

37(a) General Information

The Bureau proposes § 1026.37(a), which combines and modifies disclosures currently provided under Regulations X and Z and adds additional disclosures in the Loan Estimate 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, proposed § 1026.37(a) will promote the informed use of credit and more effective advance disclosure of settlement costs. In addition, 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, proposed § 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).

[156] While these proposed changes may require some of these five States to change their laws and/or regulations, others incorporate TILA and Regulation Z into their State laws and/or regulations by reference. Therefore, the Bureau anticipates that these other States should not have to take any action to maintain their existing exemptions directly as a result of this proposed rule.

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 Act does not prescribe a title for the integrated form. Under § 1024.2(b) of Regulation X, the form providing consumers with the RESPA good faith estimate 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 TILA good faith estimate 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) requires the creditor to use the term ''Loan Estimate'' as the title of the integrated disclosures creditors provide pursuant to proposed § 1026.19(e). The Bureau believes 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 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.

37(a)(2) Form Purpose

Proposed § 1026.37(a)(2) requires the creditor to include a statement regarding one of the primary uses of the Loan Estimate for consumers, which is to compare with the Closing Disclosure to verify the loan terms and costs. Specifically, proposed § 1026.37(a)(2) requires the creditor to provide the following statement at the top of all Loan Estimates, ''Save this Loan Estimate to compare with your Closing Disclosure.'' 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.

Requiring creditors to disclose the purpose for the Loan Estimate and related disclosures is not a new requirement. Appendix C of Regulation X currently requires specific language regarding the purpose of the GFE.[157] And while the Bureau's proposed language differs from that prescribed by HUD, the Bureau believes that the disclosure in proposed § 1026.37(a)(2) accomplishes the same goal in a clearer and more succinct manner. Accordingly, this disclosure promotes 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).

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.''

Pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), proposed § 1026.37(a)(3) mirrors § 1026.18(a) and requires the name of the creditor making the disclosure. 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 cross-references § 1026.17(d) and comment 17(d)–1 and clarifies that, in transactions with multiple creditors, only the creditor making the disclosure must be identified. Proposed comment 37(a)(3)–2 states 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.

37(a)(4) Date Issued

Appendix C to Regulation X requires creditors to provide the date of the GFE. Proposed § 1026.37(a)(4) mirrors this requirement by mandating disclosure of the date the Loan Estimate is mailed or delivered to the consumer. Proposed comment 1026.37(a)–1 clarifies 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 is proposing this requirement pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because 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, 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).

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) requires creditors to disclose the name of the applicants for the loan transaction. 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 clarifies that the names of all applicants for the mortgage loan must be disclosed on the form and that if the form cannot accommodate the names of all the applicants, the creditor may attach to the back of the form a separate page listing the remaining applicants.

37(a)(6) Property

Appendix C to Regulation X requires at the top of the GFE the ''address or location of the property'' for which the financing is sought. The Bureau proposes to use its authority in TILA

[157] Appendix C to Regulation X requires the following statement on the 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.''

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 proposed § 1026.19(e). The Bureau believes 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) requires 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 instructs creditors to provide a legal description or other locator for the property in cases where there is no street address. The proposed comment also clarifies that a zip code would be required in all instances.

37(a)(7) Sale Price

Proposed § 1026.37(a)(7)(i) requires disclosure of the contract sale price for the property identified in proposed § 1026.37(a)(6). For transactions that do not involve a seller, proposed § 1026.37(a)(7)(ii) requires disclosure of the estimated value for the property identified in proposed § 1026.37(a)(6). Proposed comment 37(a)(7)–1 provides guidance regarding the requirement to provide the estimated value of the property, if a creditor has performed its own estimate or obtained an appraisal or valuation of the property.

The disclosure of the contract sale price and estimated property value, as applicable, is a new requirement, which the Bureau proposes 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 believes 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.

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.[158] Proposed § 1026.37(a)(8) essentially mirrors appendix C to Regulation X and requires the creditor to disclose the term to maturity of the credit. The prototype mortgage disclosures used at the Bureau's consumer testing displayed this in terms of years, and consumers were able to understand and evaluate easily the term to maturity. The Bureau believes 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. Accordingly, proposed § 1026.37(a)(8) requires the loan term to be expressed in years.

The Bureau understands 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 and increases in the interest rate increase the loan term instead of the payment. Accordingly, proposed comment 37(a)(8)–1 provides 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.

The Bureau proposes § 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) and because 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.

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, 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 proposes 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 is 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 provides general guidance on identifying the most accurate loan purpose and clarifies 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. The Bureau seeks comment on whether additional loan purposes should be added to § 1026.37(a)(9).

37(a)(9)(i) Purchase

If the credit is to finance the acquisition of the property that is the subject of the loan transaction, proposed § 1026.37(a)(9)(i) requires the creditor to disclose that the loan is a ''Purchase.'' Proposed comment 37(a)(9)–1.i clarifies the meaning of the term ''purchase.''

37(a)(9)(ii) Refinance

Proposed § 1026.37(a)(9)(ii) requires 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. Like § 1026.20(a), whether a transaction is a refinancing under proposed § 1026.37(a)(9)(ii) depends on whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. 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 clarifies the meaning of the term ''refinance'' and that the consumer may or may not receive cash from the transaction. Proposed comment 37(a)(9)(ii)–1.ii also provides a description of a refinancing with and without cash provided and provides an example of how a consumer may use cash received in a refinancing transaction with cash provided. Proposed comment 37(a)(9)–2 also

[158] 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 this proposal, the Bureau intends to implement TILA section 128(a)(6) by requiring disclosure of the loan term for mortgages in proposed § 1026.37(a)(8).

clarifies 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.

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) requires the creditor to disclose that the loan is for ''Construction.'' Proposed comment 37(a)(9)–1.iii clarifies 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 clarifies 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 cross-references § 1026.17(c)(6)(ii) and comments 17(c)(6)–2 and –3 for further guidance regarding construction-to-permanent transactions.

37(a)(9)(iv) Home Equity Loan

If the extension of credit does not involve the purchase of real property as described in proposed § 1026.37(a)(9)(i) or the construction of a dwelling as described in proposed § 1026.37(a)(9)(iii) and will not be used to refinance an existing obligation as described in proposed § 1026.37(a)(9)(ii), proposed § 1026.37(a)(9)(iv) requires the creditor to state that the extension of credit is for a ''Home Equity Loan.'' Proposed comment 37(a)(9)(iv)–1.iv clarifies that the home equity loan disclosure applies whether the transaction will be secured by a first or subordinate lien on the property.

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 requires a description of the loan product. The Bureau proposes 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 believes 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. This disclosure also enables consumers to better understand the costs, benefits, and risks associated with mortgage transactions. In addition, the 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) requires the creditor to identify the type of loan product for which the consumer has applied and proposed § 1026.37(a)(10)(ii) requires 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) provides instructions on how to disclose loan products that contain one or more loan features, states that the creditor may disclose only one loan feature, and cross-references 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; and (4) balloon payment. Proposed § 1026.37(a)(10)(iv) requires 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 apply to fixed rate loans with no additional features. Finally, comments to proposed § 1026.37(a)(10) provide further descriptions and examples of the loan products and features to be disclosed, as discussed below.

37(a)(10)(i)

Proposed § 1026.37(a)(10)(i) requires disclosure of one of the following as the product for which the consumer has applied:

37(a)(10)(i)(A) Adjustable Rate

If the annual percentage 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) requires that the loan be disclosed as an ''Adjustable Rate.'' Proposed comment 37(a)(10)–1.i clarifies the proper format for disclosure of an adjustable-rate product.

37(a)(10)(i)(B) Step Rate

Under proposed § 1026.37(a)(10)(i)(B), the loan product is 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 clarifies that the proper format for disclosure of a step-rate product.

37(a)(10)(i)(C) Fixed Rate

Proposed § 1026.37(a)(10)(i)(C) requires 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 provides guidance regarding the disclosure required by § 1026.37(a)(10)(i)(C).

37(a)(10)(ii)

Proposed § 1026.37(a)(10)(ii) requires 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) requires the consumer to disclose one of the following features, as applicable: Negative amortization, interest-only, step payment, balloon payment, or seasonal payment. Proposed comment 37(a)(10)–2 clarifies the requirements of § 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. For example: 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 balloon payment feature, however, would be disclosed elsewhere on the form as described in the section-by-section analysis of proposed § 1026.37(b) and (c).

37(a)(10)(ii)(A) Negative Amortization

Proposed § 1026.37(a)(10)(ii)(A) requires 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 provides an example of the disclosure of a loan product with a negative amortization feature.

37(a)(10)(ii)(B) Interest Only

Proposed § 1026.37(a)(10)(ii)(B) requires 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 provides an example of the disclosure of a loan product with an interest only feature.

37(a)(10)(ii)(C) Step Payment

Proposed § 1026.37(a)(10)(ii)(C) requires 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 clarifies that the term ''step payment'' is sometimes also called a ''graduated payment'' and provides an example and guidance on the format to be used when disclosing a loan product with a Step Payment feature.

37(a)(10)(ii)(D) Balloon Payment

Proposed § 1026.37(a)(10)(ii)(D) requires 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 clarifies that the term ''balloon payment'' has the same meaning as in proposed § 1026.37(b)(5) and provides further guidance on the format to be used when disclosing a loan product with a balloon payment feature.

37(a)(10)(ii)(E) Seasonal Payment

Proposed § 1026.37(a)(10)(ii)(E) requires 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 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. For example, 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. These loans are sometimes called ''teacher loans.'' Accordingly, proposed § 1026.37(a)(10)(ii)(E) provides for the disclosure of such a product feature. Proposed comment 37(a)(10)–2.v provides guidance regarding this requirement.

37(a)(10)(iii)

Proposed § 1026.37(a)(10)(iii) requires 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). 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. For example, the existence of a balloon payment is also 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, 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).

37(a)(10)(iv)

Finally, proposed § 1026.37(a)(10)(iv) requires 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. For example, if the consumer applies for an adjustable-rate loan that includes a scheduled regular periodic payment that results in negative amortization in years one through three, interest-only payments in years four and five, and an interest rate that adjusts every two years after year three, the creditor would disclose the product as ''3 Year Negative Amortization, 3/2 Adjustable Rate.''

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 proposes 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) may include different cost structures or underwriting requirements. 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 believes 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 are required to disclose one of the following loan types: Conventional, FHA, VA, or Other.

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) requires the creditor to disclose that the loan is a ''Conventional.''

37(a)(11)(ii) FHA

If the loan is insured by the Federal Housing Administration, proposed § 1026.37(a)(11)(ii) requires the creditor to disclose that the loan is a ''FHA.''

37(a)(11)(iii) VA

If the loan is guaranteed by the U.S. Department of Veterans Affairs, proposed § 1026.37(a)(11)(iii) requires the creditor to disclose that the loan is a ''VA.''

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) requires the creditor to disclose the loan type as ''Other'' and provide a brief description of the loan. Proposed comment 1026.37(a)(11)–1 provides 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.

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 proposes 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 believes 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) requires 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 clarifies 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.

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 GFE. The Bureau believes that this information is critical to the consumer's ability to understand the transaction and avoid the uninformed use of credit. Furthermore, disclosure of this information promotes 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 proposes 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) requires 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) requires disclosure of the date and time (including the applicable time zone) the locked rate would expire. Proposed § 1026.37(a)(13)(ii) states 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 clarifies 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 clarifies that the information provided under proposed § 1026.37(a)(13) is required whether or not the transaction is consummated or the terms are otherwise not accepted or extended. Proposed comment 37(a)(13)–3 states that all times provided in the disclosure must reference the applicable time zone and provides an example of an appropriate disclosure of the applicable time zone.

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 consumer testing suggests 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.

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 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 proposes 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). At the Bureau's consumer testing, participants were able to use the summary table to identify and compare easily the key loan terms for different loans. Based on its consumer testing, the Bureau believes 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, enable comparisons of different credit terms offered by the same or multiple creditors, and enable consumers to verify information about the loan provided by the creditor orally or in some other form, such as a worksheet. The Bureau believes that 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, 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 table appears under the heading ''Loan Terms'' to enhance visibility. The individual items of information in the table are also labeled to enhance visibility. The format provides 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 format of the Loan Terms table will help consumers quickly and easily identify their key loan terms.

The Bureau proposes comment 37(b)–1 to provide additional guidance to creditors regarding the Loan Terms table. Proposed comment 37(b)–1 clarifies 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. 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 GFE with the text, ''Your initial loan amount is.''

The Bureau believes, 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 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 proposes 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 proposes 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 believes 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, like HUD, the Bureau believes the loan amount is necessary to understanding the transaction and its disclosure would effectuate the purposes of RESPA.

Proposed § 1026.37(b)(1) requires 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 is labeled ''Loan Amount'' to enhance visibility. 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.

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).[159] 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 GFE state the interest rate with the text ''your initial interest rate is'' in the summary table on page 1.

The Bureau believes 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. 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 proposes 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, 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 proposes 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) requires disclosure of the initial interest rate that will be applicable to the transaction, labeled the ''Interest Rate.'' 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 provides guidance regarding how to calculate the fully-indexed rate to be disclosed.

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 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 believes 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. The Bureau's consumer testing indicates that consumers use the periodic principal and interest payment of the loan as a primary factor in evaluating and comparing a loan. The Bureau believes 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. This payment enables 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

[159] As discussed below, the finance charge disclosure is implemented in proposed § 1026.38(o)(2). The APR disclosure is implemented in proposed §§ 1026.37(l)(2) and 1026.38(o)(4).

mortgage insurance. Accordingly, the Bureau proposes § 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. If the initial periodic payment may adjust based on changes to an index, the payment disclosed is required to be based on the fully-indexed rate disclosed under proposed § 1026.37(b)(2). The unit-period that is applicable to a transaction is currently described in appendix J to Regulation Z. Proposed comment 37(b)(3)–1 clarifies 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 provides guidance regarding how to calculate the payment to be disclosed if the initial interest rate is adjustable based on an index.

The Bureau believes 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. This amount allows a consumer to determine the affordability of the credit transaction and underlying real estate transaction. Accordingly, the Bureau proposes 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 proposes 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 believes 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 proposes 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 proposes this requirement pursuant to its authority under section 1405(b) of the Dodd-Frank Act. The Bureau believes 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.

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 GFE to state whether or not the loan has a prepayment penalty with the text, ''Does your loan have a prepayment penalty?''

The Bureau's 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 to consumers of prepayment penalties, proposed § 1026.37(b)(4) requires 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 is indicated by an affirmative or negative answer (designed as a simple ''yes'' or ''no'') to the question, ''Does the loan have these features?'' 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 proposes 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 believes this additional information will 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).

Section 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.

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 at 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 at 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 at 58756, 58781.[160]

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 at 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,[161] 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.

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 is proposing to define ''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 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) broadens 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 believes 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 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, 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).

Proposed comment 37(b)(4)–1 clarifies 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 clarifies that if the transaction includes a prepayment penalty, § 1026.37(b)(7) sets forth the information that must be disclosed under § 1026.37(b)(4).

Proposed comment 37(b)(4)–2.i through –2.iv gives 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 further clarifies 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 provides 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 clarifies 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

[160] 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 Federal Housing Administration (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 at 58586.

[161] 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 at 27416.

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 clarifies 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) satisfies 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 clarifies 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 § 1026.37(b)(7). For example, 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 § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). 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 required by § 1026.37(b)(4) is an affirmative answer and the information required by § 1026.37(b)(7). This proposed comment incorporates 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 definition of prepayment penalty in proposed § 1026.37(b)(4) and associated commentary substantially incorporates 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, reconciles their differences. For example, the Bureau proposes that the prepayment penalty definition in § 1026.37(b)(4) refer to payment of ''all or part of a covered transaction's principal,'' rather than merely payment ''in full,'' because knowledge of whether a partial prepayment triggers a penalty is important for consumers. Also, the Bureau is proposing 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. Based on the differing approaches taken by the Board in its recent mortgage proposals, however, the Bureau seeks comment 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 expects 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. To the extent consistent with consumer protection objectives, the Bureau believes that adopting a consistent definition of ''prepayment penalty'' across its various pending rulemakings affecting closed-end mortgages will facilitate compliance. As an additional part of this effort to adopt a consistent regulatory definition of ''prepayment penalty,'' the Bureau is also proposing certain conforming revisions to § 1026.18(k) and associated commentary, as discussed earlier in the section-by-section analysis for the proposed revised § 1026.18(k).

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 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 proposes § 1026.37(b)(5), which requires disclosure of whether the credit transaction requires a balloon payment, as defined within the provision. This disclosure is 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 Bureau's consumer testing, consumers were able to determine readily whether a loan had a balloon payment. The Bureau's consumer testing indicates that consumers consider whether a loan has a balloon payment to be an important factor in evaluating loans. The Bureau believes 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 at 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.

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 is proposing a definition of ''balloon payment'' in proposed § 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 believes that the proposed definition will promote the informed use of credit and facilitate compliance with TILA, consistent with TILA section 105(a). In addition, 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) revises the current regulatory language to state that a balloon payment cannot be a regular periodic payment. This revision is 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 if it is more than two times a regular periodic payment occurring prior to the payment increase. Moreover, proposed commentary to § 1026.37(b)(5) clarifies the meaning of regular periodic payment and discusses how all regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment (*i.e.,* 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). These clarifications are intended to resolve ambiguity in the current regulatory definition and associated commentary, and thereby facilitate compliance.[162]

This definition applies to all transactions subject to proposed § 1026.19(e). The Bureau recognizes 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 believes 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 at 27456.

The Bureau recognizes that these additional clarifications may result in more payments being disclosed as balloon payments than under the current regulatory definition. The Bureau believes 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. The Bureau seeks comment, however, on whether the definition of balloon payment in proposed § 1026.37(b)(5) should be revised to exclude any particular type of payment. Furthermore, the Bureau believes that a payment that is twice any one regular periodic payment using the regulatory definition, as revised in this 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 believes 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 believes that the existing regulatory definition may better protect consumers and would be in their interest. In addition, the Bureau believes 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.

Proposed comment 37(b)(5)–1 clarifies 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 clarifies 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 (*i.e.,* 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 gives an example of a step-rate mortgage with two different regular periodic payment amounts. Proposed comment 37(b)(5)–1.ii clarifies 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 clarifies that the ''regular periodic payments'' are based on the fully-indexed rate, except as otherwise

[162] According to existing comment 32(d)(1)(i), a payment is a ''regular periodic payment'' if it is not more than twice the amount of other payments. This definition, which is essentially the mirror image of the balloon payment definition in § 1026.18(s)(5)(i) (*i.e.,* a payment that is more than two times a regular periodic payment), leaves uncertainty as to how to determine whether a payment is a balloon payment when there are multiple regular periodic payments during the loan term (*e.g.,* if the regularly scheduled payments increase due to an adjustable rate feature).

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 refers to the analogous guidance provided in current comments 17(c)(1)–8 and –10, and gives an example of an adjustable rate mortgage with two different periodic payment amounts.

Proposed comment 37(b)(5)–1.iii clarifies 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 clarifies 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 proposed definition of balloon payment in proposed § 1026.37(b)(5) includes the payments of a single or double payment transaction. Proposed comment 37(b)(5)–2 provides 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. A single payment transaction does not have regular periodic payments, because regular periodic payments must be made two or more unit periods in succession (see proposed comment 37(b)(5)–1, described above). And 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 believes the payments of such transactions are essentially equivalent, economically and practically, from the perspective of a consumer, to a balloon payment. The comment clarifies 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).

The Bureau is coordinating 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. To the extent consistent with consumer protection objectives, the Bureau believes that adopting a consistent definition of ''balloon payment'' across the Bureau's Dodd-Frank Act rulemakings affecting closed-end credit transactions will facilitate compliance, as discussed in part II above.

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 so that consumers can easily understand the fact that the initial regular payments are for a specific time period and will end on a certain date and that payments will subsequently adjust to a potentially higher 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 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, the Bureau conducted consumer testing of prototype mortgage disclosures over ten rounds. 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 believes that this information should be disclosed so that consumers can easily find and understand it.

The Bureau proposes § 1026.37(b)(6) to require that this information be disclosed in the Loan Terms table. Specifically, proposed § 1026.37(b)(6) requires disclosure of whether the amounts required to be disclosed by proposed § 1026.37(b)(1) through (3) may increase. If those amounts may increase, the creditor must also 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 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 includes a statement of that fact for transactions that contain such a feature.

The Bureau proposes a format that provides this information as affirmative or negative answers to one comprehensive question, ''Can this amount increase after closing?'' The answers to this question are capitalized and in bold text. In addition, bullet-pointed text immediately to the right of these answers provides the maximum amounts, frequencies of changes, references to more detailed information disclosed elsewhere on the form, and other relevant information. Bold text will be used for important information in these statements, to enable consumers to see it quickly. Proposed form H–24 in appendix H of Regulation Z illustrates 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.

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 believes 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.

Accordingly, 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 proposes § 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). The Bureau believes 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 believes 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 believes 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 believes 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.

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 GFE with the text, ''your maximum prepayment penalty is $__ and ''you have a balloon payment of $__ due in __ years.''

Proposed § 1026.37(b)(7) requires 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 requires disclosure of the maximum prepayment penalty, the period in which a prepayment penalty may be imposed, the 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.

In the Bureau's consumer testing, 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. The Bureau's consumer testing has indicated that consumers place significant emphasis when evaluating loans on the potential for large balloon or prepayment penalty amounts.

The Bureau proposes 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. The Bureau believes 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 believes 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. In addition, like HUD, the Bureau believes 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. Proposed comment 37(b)(7)(i)-1 provides guidance regarding calculating the maximum amount of the prepayment penalty.

37(b)(8) Timing

The Bureau's consumer testing indicated 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 believes 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.

Accordingly, pursuant to its authority under TILA section 105(a), Dodd-Frank section 1032(a), and RESPA section 19(a), proposed § 1026.37(b)(8) requires the information required to be disclosed by paragraphs (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 provides examples of how to disclose dates using the timing rules of proposed § 1026.37(b)(8). The Bureau believes 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.

37(c) Projected Payments

Statutory Requirements

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 an example 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.[163] 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 Rules

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. 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 at 58476–77. 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 at 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.

The Bureau's Proposal

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposes 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. The Bureau believes 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) implements the requirements of TILA sections 128(a)(6) and 128(b)(2)(C), and also implements 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 continue to apply.

Like existing § 1026.18(s), proposed § 1026.37(c) requires 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 requires 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) must contain 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

[163] 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).

proposed § 1026.37(c) will appear on the first page of the Loan Estimate. The Bureau proposes that, as under § 1026.18(s), the table required by proposed § 1026.37(c) must be 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 payment table required by proposed § 1026.37(c) applies to transactions secured by the consumer's interest in a timeshare plan but does not apply to transactions secured by a dwelling that is not real property, for the reasons discussed in the section-by-section analysis to proposed § 1026.19.

The Bureau proposes to exercise its authority under TILA section 105(a), Dodd-Frank Act 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) 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 Bureau believes 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 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 Bureau believes that the Loan Terms table required by proposed § 1026.37(b) effectively discloses when payments and interest rate will vary, and that consumers will not benefit from disclosure of that information in multiple places on the disclosure. Accordingly, this proposed adjustment promotes the informed use of credit, improves 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 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 provides 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).

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(i)

Proposed § 1026.37(c)(1)(i) provides 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) provides 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 require the disclosure of additional separate periodic payments or ranges of payments: (A) 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 provide 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 clarifies 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 provides 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 are not changes to periodic principal and interest payments. For a loan that permits negative amortization, proposed comment 37(c)(1)(i)(A)–2 clarifies 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 provides that the disclosure 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 clarifies 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 states 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 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). 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 are calculated using the assumptions for minimum and maximum interest rates described in § 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 provide guidance to creditors regarding the disclosure of mortgage insurance. Proposed comment 37(c)(1)(i)(C)–1 states 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'' 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. The Bureau

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 Bureau recognizes that such guarantees are legally distinguishable from mortgage insurance, they are functionally very similar. Accordingly, proposed comment 37(c)(1)(i)(C)–1 clarifies 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 § 1026.37(c). Proposed comment 37(c)(1)(i)(C)–1 is 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 gives guidance to creditors on the calculation and termination of mortgage insurance premiums 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 clarifies that the table required by proposed § 1026.37(c) reflects 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 is not, 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 require a separate disclosure of a periodic payment or range payments.

37(c)(1)(ii)

Proposed § 1026.37(c)(1)(ii) contains 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) provides 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 § 1026.37(c)(1)(i) after the second to occur, the separate periodic payments or ranges of payments shall be 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) contains a special rule for final balloon payments. That section would require 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 clarifies that § 1026.37(c)(1)(ii)(A) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires 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, are disclosed pursuant to the general rule in § 1026.37(c)(1)(ii). Proposed § 1026.37(c)(1)(ii)(B) provides 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) provides a special rule for events that require 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 § 1026.37(c)(1)(i)(A) would require more than one separate disclosure during a single year, such periodic payments must be disclosed as a single range of payments.

37(c)(1)(iii)

Proposed § 1026.37(c)(1)(iii) provides rules for the disclosure of ranges of payments. A range of payments is 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 must 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 are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest, and the minimum payment amounts are 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 clarifies 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 § 1026.37(c)(1)(ii). For such transactions, proposed § 1026.37(c)(3)(iii) requires 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 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. 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 possible interest rate for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly 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. Proposed comment

37(c)(1)(iii)–2 clarifies that, when a range of payments is required, the amount required to be disclosed for mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) and the amount payable into escrow pursuant to § 1026.37(c)(2)(iii) shall not be disclosed as a range. Proposed comment 37(c)(1)(iii)–3 provides guidance to creditors on the disclosure of ranges of payments in adjustable rate mortgages.

37(c)(2) Itemization

Proposed § 1026.37(c)(2) requires 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 ''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 § 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 § 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 § 1026.37(c)(2)(i) through (iii), labeled ''Total Monthly Payment.'' As discussed in the Kleimann Testing Report, the Bureau's consumer testing indicates that consumers understand the table and can identify the components of their total monthly payment using this itemization of payments.

Proposed comment 37(c)(2)(ii)–1 clarifies that mortgage insurance payments 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. If the consumer is not required to purchase mortgage insurance, the creditor discloses the mortgage insurance premium as ''0''. Proposed comment 37(c)(2)(ii)–2 clarifies that the creditor must disclose mortgage insurance pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

The Bureau proposes to require creditors to disclose the amount of estimated escrow payments pursuant to its authority under TILA sections 128(a)(16), 128(b)(4)(A), and 105(a), 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 proposes 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 proposes 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, pursuant to its authority under TILA sections 128(a)(16), 128(b)(4)(A), and 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). 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, 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, 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 proposes 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 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. Requiring such disclosure in all cases may facilitate comparison between loans and improve overall understanding of credit terms. Accordingly, the Bureau believes 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, 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.

In addition, the Bureau understands that some mortgage insurance plans are structured such that periodic mortgage insurance payments decrease over time. Accordingly, the Bureau proposes 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 § 1026.37(c)(2)(i). 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 clarifies that the disclosure of taxes and insurance described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of the amounts described in § 1026.37(c)(4)(ii)(A) through (E), consistent with TILA

section 128(b)(4)(A) and current § 1026.18(s).

37(c)(3) Subheadings

Proposed § 1026.37(c)(3)(i) provides that the labels required pursuant to § 1026.37(c)(2) must be listed under the subheading ''Payment Calculation.'' Proposed § 1026.37(c)(3)(ii) provides 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. The 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 provides 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 provides 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.

37(c)(4) Taxes, Insurance, and Assessments

As discussed above, the Bureau is proposing to require creditors in transactions subject to proposed § 1026.19(e) to disclose estimated payments to escrow accounts pursuant to its authority under TILA sections 128(a)(16), 128(b)(4)(A), and 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau also proposes § 1026.37(c)(4) pursuant to this authority. Proposed § 1026.37(c)(4)(i) provides that creditors must disclose the label ''Estimated Taxes, Insurance & Assessments.'' Proposed § 1026.37(c)(4)(ii) requires 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 must 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 provide guidance to creditors on the meaning of mortgage-related insurance premiums and special assessments.

Proposed § 1026.37(c)(4)(iii) requires creditors to state that the amount disclosed pursuant to § 1026.37(c)(4)(ii) can increase over time. Proposed § 1026.37(c)(4)(iv) requires 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 § 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) requires creditors to provide a statement that the consumer must pay separately any amounts described in § 1026.37(c)(4)(ii) that are not paid by the creditor using escrow funds. Finally, proposed § 1026.37(c)(4)(vi) requires 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 is required even where no escrow account will be established for the payment some or any such amounts. The Bureau proposes 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 mortgages. Even when no escrow account is established for the payment of taxes and insurance, this is an important measure of the consumer's ability to afford the transaction. For this reason, the Bureau believes that consumers would 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. 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 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, 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.

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) implements this requirement for transactions subject to § 1026.19(e) and requires that the estimated escrow and estimated taxes, insurance, and assessments disclosures required pursuant to § 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 proposes 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. These modifications appear to be 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, 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 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.

37(d) Cash to Close

Pursuant to its authority under TILA section 105(a) and Dodd-Frank section 1032(a), the Bureau proposes to require creditors to provide the estimated total closing costs imposed upon the consumer and the estimated amount of cash needed at consummation from the consumer. 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. Accordingly, proposed § 1026.37(d) requires 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 and other costs associated with the transaction.

Under § 1026.37(d)(1), the dollar amount due from the consumer is the same amount as calculated in accordance with proposed § 1026.37(h)(4) and is disclosed under the heading of ''Cash to Close'' and labeled ''Estimated Cash to Close.'' The total dollar amount of the loan costs to be paid by the consumer at closing as calculated under proposed § 1026.37(f)(4) is disclosed under proposed § 1026.37(d)(2). The total dollar amount of the other costs to be paid by the consumer at closing as calculated under proposed § 1026.37(g)(5) is disclosed under proposed § 1026.37(d)(3). The amount of lender credits disclosed under § 1026.37(g)(6)(ii) is disclosed under § 1026.37(d)(4). The sum of the amounts disclosed under proposed § 1026.37(d)(2), through 1026.37(d)(4) is disclosed with a description of ''Closing Costs'' under § 1026.37(d)(5). A statement directing the consumer to refer to the location of the Loan Estimate that contains the tables required under § 1026.37(f) and (g) is required under § 1026.37(d)(6).

37(e) Web Site Reference

Appendix C to Regulation X includes a statement in the RESPA GFE that directs consumers to HUD's Web site 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. The Bureau proposes to use 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 Web site in proposed § 1026.37(e). The Bureau believes that a disclosure in the Loan Estimate directing consumers to additional information and tools on its Web site 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).

Therefore, proposed § 1026.37(e) requires creditors to include a statement notifying the consumer that additional information and tools regarding mortgage loans may be found at the Bureau's Web site. Proposed § 1026.37(e) also requires a reference to the link/uniform resource locator (URL) address for the Bureau's Web site.

37(f) Closing Cost Details; Loan Costs

Under section 5(c) of RESPA creditors must provide mortgage loan applicants 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 consummation of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X 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 the Bureau 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).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act sections 1032(f) and, for residential mortgage loans, 1405(b), the Bureau proposes 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) implement these early disclosure requirements of TILA and RESPA by setting out details relating to the costs for consummating the mortgage loan, 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 proposed

§ 1026.37(f) and (g), will improve consumer understanding of the credit and property transactions. 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 will also 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. In addition, these disclosures will ensure 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 particular, proposed § 1026.37(f) requires 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 must disclose the individual itemized charges, 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.[164]

Proposed comment 37(f)–1 explains 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 provides a cross-reference to the commentary under § 1026.19(e)(1)(ii), which discusses the requirements and responsibilities of mortgage brokers that provide the disclosures required under § 1026.19(e) and § 1026.37(f).

37(f)(1) Origination Charges

Under proposed § 1026.37(f)(1), charges 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. The points that the consumer will pay to the creditor to reduce the interest rate are specifically identified and itemized as the first item under this subheading.

As discussed above in part II.F, the Bureau currently is engaged in six other rulemakings that relate to mortgage credit and intends that the rulemakings function collectively as a whole. Accordingly, the Bureau may have to modify aspects of this proposed rule not only in response to public comment on this proposal, but also to maintain consistency with final determinations made after opportunity for public comment in the other, related rulemakings. For example, 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). Amended TILA section 129B(c)(2) 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. *Id.* As discussed in the materials distributed for the Small Business Review Panel convened for the Residential Mortgage Loan Origination Standards rulemaking implementing amended TILA section 129B(c)(2), the Bureau is considering exercising its waiver or exemption authority in that rulemaking.[165] The Bureau will coordinate these rulemakings and, if applicable and appropriate, will modify the disclosure of origination charges under § 1026.37(f)(1) for consistency with the final rule implementing amended TILA section 129B(c)(2). The Bureau invites 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 public will also have the opportunity to comment on the Bureau's implementation of amended TILA section 129B(c)(2) when a proposed rule is published later this summer. The Bureau expects the comment period for the proposal set forth in this notice will still be open at that time.

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) below, the Bureau notes 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 has 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 is proposing 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) requires the creditor to disclose the amounts of origination fees paid by the consumer to creditors and loan

[164] 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 Five Large Markets,'' *http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html,* based on HUD–1 settlement statements of FHA loans from 2001. *See* p. 13. The study discusses, among other things, that an observed positive association between the number of items listed and net service fees was statistically significant after taking home prices into account. *See* p. 29. 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 this proposal, itemization is 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 believes the highly visible subtotals, along with the highly visible ''Services You Can Shop For'' subcategory of Closing Costs on the Loan Estimate, will inform consumers that they can shop for their own service providers and provide them with, along with the itemization, readily comparable cost categories to shop between creditors and service providers. Such shopping for settlement service providers, according to the study, could provide ''significant benefits to consumers.'' *See* p. 28. The study suggests that future research using more detailed data on costs incurred by settlement agents would be valuable. *See* p. 29. The Bureau welcomes additional comments and studies on the issue of itemization of costs on the Loan Estimate and Closing Disclosure during the comment period.

[165] *Small Business Review Panel for Residential Mortgage Loan Origination Standards Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (May 19, 2012), available at *http://files.consumerfinance.gov/f/201205_cfpb_MLO_SBREFA_Outline_of_Proposals.pdf.*

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 proposed § 1026.38(f)(1), the full disclosure required by TILA section 128(a)(18) is 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 be included in the Loan Estimate, they would be 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 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 charging any fees for getting 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 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.[166] The Board adopted these restrictions only after concluding that disclosure of creditor-paid compensation did not provide sufficient protection for consumers.[167]

Section 1403 of the Dodd-Frank Act codified similar restrictions. 15 U.S.C. 1639b(c). As a result of these additional consumer protections and based on consumer testing, the Bureau believes that consumers may not benefit from any additional disclosure of rate-based compensation when shopping for and considering the costs of a mortgage loan. Therefore, in proposed § 1026.37(f)(1), the Bureau proposes to eliminate the separate GFE Blocks 1 and 2 disclosures, thereby eliminating the need to follow different instructions for loans involving a mortgage broker than for loans originated without one.

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 form, 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 proposed 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, proposed § 1026.37(f) would 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 noted above, § 1026.37(f) is also proposed pursuant to the Bureau's exemption authority under TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Accordingly, the Bureau is proposing to exempt 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.

The Bureau invites 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, because the foregoing analysis under TILA section 105(f) and the Bureau's other exemption authorities may apply to the disclosure of creditor-paid compensation on the Closing Disclosure pursuant to proposed § 1026.38(f)(1), the Bureau solicits comments on whether the disclosure should be omitted there as well. While a goal of the proposed forms and requirements is to develop clear disclosures that help consumers understand the credit transaction and closing costs, another goal is to facilitate consumer comparison of the actual charges at consummation with the charges estimated soon after application. If, as proposed, the amounts received by loan originators from the creditor are not itemized in the Loan Estimate, the consumer-comparison purpose of the disclosure forms is not advanced by itemizing those amounts in the Closing Disclosure. In fact, itemizing amounts in the Closing Disclosure that are not itemized on the Loan Estimate may add to consumer confusion without any offsetting benefit.

The Bureau believes, however, that certain additional information about

[166] 75 FR 58509 (Sept. 24, 2010) (Board's 2010 Compensation Final Rule).

[167] 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 at 58511. 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 International, *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf.*

origination costs may benefit consumers at early stages of the loan process. In its 2008 RESPA Final Rule, HUD explained its reason for limiting to lump-sum amounts certain disclosures, such as for origination and title charges, as avoiding consumer confusion resulting from a proliferation of itemized fees. HUD described the RESPA GFE that was in place before the effective date of the 2008 RESPA final rule as ''not inform[ing] consumers what the major costs are so that they can effectively shop and compare mortgage offers among different loan originators.'' 73 FR at 68260. Therefore HUD sought to simplify the mortgage loan origination process by consolidating costs into a few major cost categories on the RESPA GFE. *Id.*

The Bureau understands HUD's reasoning in its 2008 RESPA final rule for establishing revised requirements for the disclosure of origination-related charges in the RESPA GFE form. The Bureau notes, however, that HUD did not specifically test the effect of separating the lump sum amounts for major categories of loan costs into component charges.[168] As discussed in the Kleimann Testing Report, in several rounds of testing, the Bureau examined the effect of such itemization of loan costs on consumers' understanding of the loan transaction and their tendency and ability to shop. As a result of its testing, the Bureau proposes to modify the requirements for disclosing origination-related items on the Loan Estimate. As discussed in the Kleimann Testing Report, at the Bureau's consumer testing, participants were more likely to question loan costs when they were presented in an itemized format, rather than as only an aggregate or lump sum of those costs. While participants commented favorably on lump-sum totals, they also asked for more detail about the fees that were included in the lump sum, especially when the total was a significant amount, such as for origination charges or title fees.

Further, as discussed in the Kleimann Testing Report, participants more often indicated a desire to negotiate origination charges and shop for third-party services when provided the additional details about these closing costs. Itemized closing costs also prompted participants to ask more questions about the other costs in the Loan Estimate. Although participants also responded favorably to lump-sum disclosures, without the additional information about the cost category they were less likely to indicate a desire to negotiate costs, shop for providers, and ask for additional detail about a large cost. As discussed in the Kleimann Testing Report, testing indicates that descriptive, itemized listings of the component charges in a category of closing costs related to improved performance of the participants in understanding both the underlying services provided and the amounts imposed for those services. In addition, testing participants stated that they felt more comfortable with the transaction when provided with additional detail, in part because they believed they were more responsible consumers when they were more informed. The more-complete information also may help a consumer determine whether to shop for a particular service or services. During its outreach efforts, the Bureau heard anecdotal reports that creditors are often prepared to provide consumers with additional detail about aggregate amounts disclosed on the RESPA GFE, in any event. State law also may require creditors to provide such additional detail about certain categories of costs by consummation or before accepting a fee,[169] or to retain such detail in their loan files.[170]

Therefore, proposed § 1026.37(f)(1) does not limit the disclosure of origination-related closing costs to an aggregate amount with two lines under predefined headings (as is the case with the RESPA GFE). Instead, proposed § 1026.37(f)(1) requires that the Loan Estimate include a subtotal of the amounts for all ''Origination Charges,'' but permits the creditor to list up to 13 component items. The creditor must use a descriptive label for each component fee or charge, and must disclose the amount of that fee or charge. Proposed § 1026.37(f)(1) requires the creditor to include under the subheading ''Origination Charges'' the percentage of the loan amount, and the resulting calculation of the dollar amount, that is charged to the consumer as points to lower the interest rate. The Loan Estimate form H–24, in appendix H to Regulation Z, includes a line for this disclosure immediately under the subheading ''Origination Charges.'' The line's label reads: ''__% of Loan Amount (Points),'' and the blank before the percentage sign is to be filled in with the applicable number.

The Bureau does not propose to eliminate the disclosure of a single total amount of origination charges from the Loan Estimate form, however. The RESPA GFE currently shows a subtotal of the origination charges on Line A (''Your Adjusted Origination Charges''). Pursuant to § 1026.37(f)(1), the Bureau proposes to show in the Loan Estimate a similar subtotal accompanying the subheading ''Origination Charges.'' The Bureau's testing of the Loan Estimate forms indicates that consumers can easily find and use this subtotal of the origination charges to evaluate and compare loans, as discussed in the Kleimann Testing Report. Further, the testing indicates that consumers easily understand that the subtotal represents the sum of the itemized fees and charges.

The Bureau is proposing 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 proposed 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). Furthermore, for the reasons stated above, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

The Bureau is aware of concerns that permitting itemization may encourage creditors to list numerous component charges that the RESPA GFE currently requires to be consolidated into one

[168] *See,* U.S. Dep't. of Hous. and Urban Dev., *Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE),* prepared by Kleimann Communications Group, Inc. (2008), available at *http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf.*

[169] *See, e.g.,* Tex. Ins. Code Ann. § 2702.053 (title charges); Ga. Comp. R. & Regs. 80–11–1–.01 (origination charges).

[170] *See, e.g.,* North Carolina Commissioner of Banks Memorandum, *Disclosure of Origination Fees under HUD's New RESPA Rules* (December 3, 2010), available at *http://www.nccob.gov/public/docs/Financial%20Institutions/Mortgage/OCOB_Letter_Regarding_Disclosure_of_Origination_Fees_under_HUDs_new_RESPA_Rules.pdf.*

charge.[171] Based on its testing, however, the Bureau believes that proposed § 1026.37(f)(1), which permits some itemization but also requires disclosure of the subtotal of origination charges, provides consumers with information they want without encumbering their ability to compare credit offers among different creditors. The Bureau invites 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)(1), should be included in the final rule and, if so, what those limits should be.

Proposed comment 37(f)(1)–1 clarifies 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 includes 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 clarifies that only loan originator charges paid directly by the consumer are included in the items listed pursuant to § 1026.37(f)(1), but notes 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 provides examples of the items that might be disclosed as ''Origination Charges'' on the Loan Estimate. Proposed comment 37(f)(1)–4 explains 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 clarifies 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.

37(f)(2) Services You Cannot Shop For

The fees and charges listed under the subheading ''Services You Cannot Shop For'' pursuant to proposed § 1026.37(f)(2) are for services that the creditor would require 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) are listed under this subheading. As discussed above, § 1026.19(e)(3)(ii) applies the same criterion in determining whether an estimated charge is subsequently permitted to increase by a limited amount, absent other considerations set out in § 1026.19(e)(3).

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).

As discussed in connection with proposed § 1026.37(f)(1), consumer testing performed on Loan Estimate forms 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. Pursuant to § 1026.37(f)(2) and (3), the Bureau proposes to show in the Loan Estimate subtotals and itemized amounts for loan costs, including for title-related services, on the highlighted lines with the subheadings ''Services You Cannot Shop For'' and ''Services You Can Shop For.'' The Bureau's testing of the forms indicates that consumers can easily find and appropriately use the subtotals of these amounts, as discussed in the Kleimann Testing Report.

Pursuant to § 1026.37(f)(2), each item 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 must be identified beginning with ''Title—.'' The creditor may use up to 13 lines to itemize charges under the subheading for ''Services You Cannot Shop For.''

The Bureau is proposing 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, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

As discussed above, the Bureau is aware of concerns that permitting itemization may encourage creditors to list numerous component charges that the RESPA GFE currently requires to be consolidated. The Bureau invites 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.

Proposed comment 37(f)(2)–1 cross-references 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 provides examples of the services that might be listed under ''Services You Cannot Shop For.'' Proposed comment 37(f)(2)–3 provides examples of services that would be listed using a phrase beginning with ''Title—.'' Proposed comment 37(f)(2)–4 clarifies that the

[171] In its 2008 RESPA Final Rule, HUD stated that: ''Current RESPA regulations have led to a proliferation of charges that makes consumer shopping and the mortgage settlement process both difficult and confusing, even for the most informed shoppers. Long lists of charges certainly do not highlight the bottom-line costs so consumers can shop and compare mortgage offers among different originators.'' 73 FR 68204, 68267 (Nov. 17, 2008).

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 it cross-references comment 37(g)(4)–1 for the disclosure of the premium for owner's title insurance.

37(f)(3) Services You Can Shop For

The fees and charges listed under the subheading ''Services You Can Shop For'' pursuant to proposed § 1026.37(f)(3) are 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) are listed under this subheading. Thus, all Loan Costs that are not paid to the creditor or mortgage broker are itemized exclusively under either this subheading or the subheading ''Services You Cannot 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).

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. Pursuant to § 1026.37(f)(2) and (3), the Bureau proposes to show in the Loan Estimate subtotals and itemized amounts for loan costs, including for title-related services, on the highlighted lines with the subheadings ''Services You Cannot Shop For'' and ''Services You Can Shop For.'' The Bureau's testing of the forms indicates that consumers can easily find and appropriately use the subtotals of these amounts.

Pursuant to § 1026.37(f)(3), each item disclosed under the subheading ''Services You Can 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 fees and charges relate to the provision of title insurance and the handling of the closing must be identified beginning with ''Title—.'' The creditor may use up to 14 lines to itemize charges under this subheading.

The Bureau is proposing 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, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

As discussed above, the Bureau is aware of concerns that itemization may encourage creditors to list numerous component charges that the RESPA GFE currently requires to be consolidated. The Bureau invites 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.

Proposed comment 37(f)(3)–1 provides 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 provides examples of the services that might be listed under ''Services You Can Shop For.'' Proposed comment 37(f)(3)–3 provides 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 it cross-references comment 37(g)(4)–1 for the disclosure of the premium for owner's title insurance.

37(f)(4) Total Loan Costs

Proposed § 1026.37(f)(4) requires the creditor to disclose, labeled ''Total Loan Costs,'' the sum of the subtotals disclosed under § 1026.37(f)(1) through (3) for Origination Charges, Services You Cannot Shop For, and Services You Can Shop For, respectively. This total represents 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 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, 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

Proposed § 1026.37(f)(5) requires 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 must be listed as the first item under the subheading ''Origination Charges,'' all items must be listed in alphabetical order under the applicable subheading. The current RESPA GFE and early TILA disclosure do not include a similar requirement. 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 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

Proposed § 1026.37(f)(6) provides 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 must be disclosed as an aggregate amount in the last line permitted under the applicable paragraph. An addendum may be used to itemize disclosures required by § 1026.37(f)(3), or any remaining charges may be disclosed as an aggregate amount in the last line permitted under paragraph (f)(3). The Bureau is proposing 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 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 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.

Proposed comment 37(f)(6)–1 clarifies 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 provides an example of a label that may be used to reference an addendum as permitted under § 1026.37(f)(6)(ii).

37(g) Closing Cost Details; Other Costs

Under section 5(c) of RESPA, creditors must provide mortgage loan applicants 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 consummation of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X implements this mandate by requiring creditors and mortgage brokers to provide the 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 GFE, including which loan costs must be included and how to identify those costs on the GFE.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau 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).

Pursuant to its authority under Dodd-Frank Act section 1032(f), TILA section 105(a), and RESPA section 19(a), the Bureau proposes to require creditors to disclose 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) implement the early disclosure requirements in TILA and RESPA by setting out details relating to the costs for consummating the mortgage loan, 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 proposed § 1026.37(f) and (g), will improve consumer understanding of the credit and property transactions. 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 will also 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 the proposed rule. These disclosures will ensure 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, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.37(g) requires 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) are necessary to complete the real estate closing. These items usually concern payments for governmental requirements, insurance premiums, and items that are charged by parties to the property transaction other than the creditor. The creditor must disclose under four subheadings individual itemized charges, along with subtotals for categories of those itemized charges.

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. Consistent with that feedback, under two additional subheadings, the creditor must disclose the total of Other Costs and the total of Loan Costs plus Other Costs. 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 loan and property transactions, shop for the loan and certain 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). Proposed comment 37(g)–1 describes the kinds of charges that are disclosed under § 1026.37(g). Proposed comment 37(g)–2 clarifies 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 will be disclosed, however, in the Closing Disclosure pursuant to § 1026.38(f), (g), (j) and (k).

37(g)(1) Taxes and Other Government Fees

Proposed § 1026.37(g)(1) requires 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. Recording fees differ from transfer taxes because recording fees are based on the nature or physical characteristics of the document being recorded and are not based on the sales price or loan amount. The Bureau is proposing 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 proposed requirements in § 1026.37(g)(1). This information also 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 mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(1)–1 clarifies 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 clarifies 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 explains 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 clarifies 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). This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p.34, #2 (''GFE-Block 8''). Proposed comment 37(g)(1)–5 explains that although transfer taxes paid by the seller in a purchase transaction are not disclosed pursuant to § 1026.37(g), they will be disclosed on the Closing Disclosure under § 1026.38(g)(1)(ii). Proposed comment 37(g)(1)–6 clarifies 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.

37(g)(2) Prepaids

Proposed § 1026.37(g)(2) requires the disclosure 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 prescribes some of the items, and additional information about those items, that must be included under the subheading ''Prepaids.'' The Bureau is proposing 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 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, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(2)–1 provides 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 clarifies 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 clarifies 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 clarifies that the lines and labels required under § 1026.37(g)(2) may not be deleted.

37(g)(3) Initial Escrow Payment at Closing

Proposed § 1026.37(g)(3) requires the disclosure of the initial payments to establish an escrow account to pay for future recurring charges. Disclosure of these amounts 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. Proposed § 1026.37(g)(3) also prescribes some of the items, and additional information about those items, that must be included under the subheading ''Initial Escrow Payment at Closing.'' The Bureau is proposing 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, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(3)–1 clarifies 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 clarifies that the aggregate escrow account adjustment required for the HUD–1 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 clarifies 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 clarifies that the lines and labels required under § 1026.37(g)(3) may not be deleted.

37(g)(4) Other

Proposed § 1026.37(g)(4) requires 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 must include 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 must include the parenthetical ''(optional)'' at the end. The items disclosed under proposed § 1026.37(g)(4) are not required by the creditor. These items are also not additional coverage or endorsements added to products required by the creditor. Accordingly, they are not 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. The Bureau is proposing 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 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, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(4)–1 clarifies 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. This comment is consistent with guidance provided in the HUD RESPA FAQs p.33, #3 (''GFE-Block 5''). Proposed comment 37(g)(4)–1 also provides an example of a label for owner's title insurance and cross-references comment 37(f)(2)–4 for disclosure of the premium for lender's title insurance. Proposed comment 37(g)(4)–2 clarifies 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 at the full premium rate. Proposed comment 37(g)(4)–3 provides examples of products to which the description ''(optional'') applies and cross-references 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 provides 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 refers to comment 19(e)(3)(iii)–3 concerning application of the good faith requirement for services that are not required by the creditor.

37(g)(5) Total Other Costs

Proposed § 1026.37(g)(5) requires disclosure under the subheading ''Total Other Costs'' of the sum of the subtotals disclosed pursuant to paragraphs (g)(1) through (g)(4). The Bureau is proposing 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 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 mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed 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

Proposed § 1026.37(g)(6) requires 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 paragraphs (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. The Bureau is proposing 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 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 mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). Proposed comment 37(g)(6)(iii)–1 clarifies that generalized lender credits not associated with a particular service are disclosed under § 1026.37(g)(6)(iii), 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.

37(g)(7) Item Descriptions and Ordering

In identifying the items listed as Other Costs, the creditor is required to use terminology that briefly and clearly describes the item. All items must be listed in alphabetical order following the items prescribed to be included under the subheading. The current RESPA GFE and early TILA disclosure do not include a similar requirement. The Bureau is proposing 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 the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permit 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)(8) Use of Addenda

Proposed § 1026.37(g)(8) provides 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 must be disclosed as an aggregate amount in the last line permitted under the applicable subheading. The Bureau is proposing 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 transactions 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.

Proposed comment 37(g)(8)–1 clarifies 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.

37(h) Calculating Cash To Close

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a), the Bureau proposes § 1026.37(h), which requires the disclosure of the calculation of an estimate of the cash needed from the consumer at consummation of the transaction. In addition to promoting the informed use of credit (which is a purpose of TILA), this 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 product, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. Proposed comment 37(h)-1 clarifies that the labels to be used on the Loan Estimate for each amount must match their description in proposed § 1026.37(h)(1) to (7).

37(h)(1) Total Closing Costs

37(h)(2) Closing Costs To Be Financed

Under § 1026.37(h)(1), the total closing costs would be disclosed as calculated under § 1026.37(g)(6) as a positive number. Under § 1026.37(h)(2), the amount of the closing costs to be paid from loan proceeds would be disclosed as a negative number.

37(h)(3) Downpayment and Other Funds From Borrower

Under § 1026.37(h)(3), the amount of the downpayment and other funds from consumer at consummation would be disclosed as a positive number. In a purchase transaction the downpayment would be 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 be calculated under § 1026.37(h)(5).

37(h)(4) Deposit

Under proposed § 1026.37(h)(4), 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 disclosed as a negative number. Proposed comment 37(h)(4)–1 clarifies that in any transaction other than a purchase transaction, the amount disclosed under proposed § 1026.37(h)(4) must be $0.

37(h)(5) Funds for Borrower

Under proposed § 1026.37(h)(5), the amounts to be disclosed under both § 1026.37(h)(3) and § 1026.37(h)(5) are calculated by subtracting the amount of debt being satisfied by the real estate transaction and the amount of the credit extended by the new loan, excluding any amount under § 1026.37(h)(2) since that amount of the credit extended has already been accounted for in the cash to close calculation by inclusion in § 1026.37(h)(2). Funds for Borrower'' is intended to generally represent the amount anticipated to be disbursed to the consumer or used at 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'' is made under proposed § 1026.37(h)(5). When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(3), and $0.00 is disclosed under § 1026.37(h)(5). When the result of the calculation is negative, that amount is disclosed under § 1026.37(h)(5), and $0.00 is disclosed under § 1026.37(h)(3). When the result is $0.00, $0.00 is disclosed in both §§ 1026.37(h)(3) and 1026.37(h)(5).

37(h)(6) Seller Credits

Under proposed § 1026.37(h)(6), the amount of any seller credit, to the extent known by the creditor, is disclosed as a negative number. Proposed comment 37(6)–1 clarifies that seller credits known by the creditor at the time of application are disclosed under § 1026.37(h)(6), and that seller credits that are not known by the creditor are not disclosed under § 1026.37(h)(6).

37(h)(7) Adjustments and Other Credits

Under proposed § 1026.37(h)(7) 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 disclosed as a negative number. Proposed comment 37(h)(7)–1 clarifies 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 § 1026.37(h), would be included in this amount to the extent known by the creditor. Proposed comment 37(h)(7)–2 clarifies that the term ''persons'' as used in § 1026.37(h)(7) includes all individuals and any entity, regardless of the legal structure of such entity. Proposed comment 37(h)(7)–3 clarifies that only credits from parties other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(7). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(6) and § 1026.37(g)(6)(ii), respectively. Proposed comment 37(h)(7)–4 clarifies that other credits known by the creditor at the time of application are disclosed under § 1026.37(h)(7), and that other credits that are not known by the creditor are not disclosed under § 1026.37(h)(6).

37(h)(8) Estimated Cash To Close

Under proposed § 1026.37(h)(8) the total of the amounts disclosed under proposed § 1026.37(h)(1) to (7) is disclosed. Proposed comment 37(h)(8)-1 clarifies that the sum total of § 1026.37(h)(1) through (7) must be disclosed pursuant to § 1026.37(h)(8) as either a positive number, a negative number, or zero. A positive number indicates the estimated amount that the consumer can be expected to pay at consummation to complete the transaction. A negative number indicates the estimated amount that the consumer can receive from the transaction at consummation. A result of zero indicates that the consumer is anticipated to neither need to pay any amount or receive any amount from the transaction at consummation.

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.

The Bureau believes 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 include a period during which the payment may not pay principal (such as an interest-only period) or is not required to make payments should be clearly disclosed to consumers. In the Bureau's consumer testing, participants generally were able to use this information to evaluate the credit terms of the loan disclosed.

For example, the Bureau provided mortgage disclosures for interest-only loans to participants using a prototype of an ''adjustable payment table'' at its consumer testing. The table 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. 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. They 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.

Proposed § 1026.37(i) requires 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) requires provision of an Adjustable Interest Rate table for credit transactions with terms that permit the interest rate to adjust after consummation. Proposed § 1026.37(i)(1) through (3) requires 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 requires 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 understands 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.

The format of the table as required by proposed § 1026.37(o), and as illustrated by form H–24 in appendix H to Regulation Z, provides 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 are set apart from these answers by a subheading in bold text. The Bureau believes, based on consumer testing, that this format displays the information in a readily visible, clear, and understandable manner for consumers.

The Bureau proposes 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 proposes 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 believes 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, this 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. In addition, the Bureau believes this information may improve consumer awareness and

understanding of transactions involving residential mortgage loans and is in the interest of consumers and the public interest.

Proposed comment 37(i)–1 clarifies 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 proposed § 1026.37(a)(10)(ii)(E). The creditor is not permitted to disclose the table if the loan terms do not meet these requirements, even if the table is left blank or disclosed with an ''N/A'' within each row. The Bureau believes that the inclusion of the AP table in such cases 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 marked ''not applicable.'' As the information within the table must be determined dynamically, depending on each transaction's terms, the Bureau believes a requirement that it be omitted when not applicable is unlikely to be a significant additional burden. This comment references proposed comment 37–1, which clarifies the general permission in proposed § 1026.37 to provide the required disclosures ''as applicable'' is subject to the more specific prohibition in proposed § 1026.37(i), which does not permit disclosure of the AP table when it is not applicable. As the two tables' numbers of rows and columns are determined dynamically, depending on each transaction's terms, the Bureau believes a requirement that they be omitted when not applicable is unlikely to be a significant additional burden. The Bureau seeks comment on whether this dynamic inclusion/exclusion requirement would be unduly burdensome for creditors.

Proposed comment 37(i)–2 provides guidance and examples of how the information required by proposed § 1026.37(i)(1) through (4) should be disclosed. Proposed comment 37(i)(5)–1 clarifies that the applicable unit-period should be disclosed in the subheading required by proposed § 1026.37(i)(5). Proposed comment 38(i)(5)–2 provides guidance on how to disclose the first payment adjustment required to be disclosed by proposed § 1026.37(i)(5)(i) when the exact payment number is unknown at the time of the disclosure. Proposed comment 38(i)(5)–3 provides guidance regarding how to disclose the frequency of adjustments to the periodic principal and interest payment after the initial adjustment, as required by proposed § 1026.37(i)(5)(ii). Proposed comment 37(i)(5)–4 provides 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).

The format required by proposed § 1026.37(o), and illustrated by forms H–24(b) and (c) in appendix H to this part, provides the information required by proposed § 1026.37(i) in a concise, organized table. This table appears immediately adjacent to the Adjustable Interest Rate (AIR) Table required by proposed § 1026.37(j) for loans that also permit the interest rate to adjust after consummation. The table uses bold text 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 uses 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.

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 believes that loan terms that can cause the interest rate to adjust should be clearly disclosed to consumers. At the Bureau's 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) provides key information about interest rate adjustments, the Bureau believes more detail regarding an adjustable interest rate is important because it would provide consumers with additional detail regarding potential changes to the interest and periodic payments that may be useful in evaluating and comparing loans.

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 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 enabled consumers to determine the interest rate terms of the transaction and to compare two adjustable-rate loans with different terms.

Therefore, the Bureau proposes 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 Adjustable Interest Rate (AIR) Table, under proposed § 1026.37(j). 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 they typically do not receive the promissory note until they are at the closing table. 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. 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, participants in the Bureau's 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. The Bureau believes this information may enable consumers to understand and compare credit terms more readily, effectuating the purposes of TILA. For similar reasons, the Bureau believes 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 believe 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) requires 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) requires disclosure of the amount of any adjustments to the interest rate that are scheduled and their frequency. The table also requires 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 clarifies 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 or disclosed with an ''N/A'' within each row. As with the AP table, the Bureau believes that the inclusion of the AIR table in such cases would be unduly distracting and confusing to a consumer and potentially cause information overload—especially if an entire table is included only to be marked ''not applicable.'' As the information within the table must be determined dynamically, depending on each transaction's terms, the Bureau believes a requirement that it be omitted when not applicable is unlikely to be a significant additional burden. In the discussion of proposed § 1026.37(i) above, the Bureau seeks comment on whether this dynamic inclusion/exclusion requirement would be unduly burdensome for creditors.

Proposed comment 37(j)(1)–1 provides guidance regarding how the name of the index may be shortened. Proposed comment 37(j)(2)–1 clarifies that the table discloses the information required by proposed § 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 provides guidance regarding the initial interest rate that must be disclosed. Proposed comment 37(j)(4)–1 clarifies how the minimum interest rate should be disclosed if the legal obligation does not state a minimum rate. Proposed comment 37(j)(4)–2 clarifies 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 clarifies 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 clarifies 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(C) in appendix H to this part, provides the information required by proposed § 1026.37(j) in a concise, single table. This table appears 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 uses 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 believes this format displays the information in a clear, readily visible, and understandable manner for consumers.

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 is proposing 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 believes that 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. 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 matter 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). 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).

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 is proposing § 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. Thus, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau 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) will be implemented in a separate rulemaking. The Bureau proposes 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) requires creditors to provide certain contact and licensing information for themselves, the mortgage broker, and their respective loan officers, as applicable. The Bureau expects to harmonize this proposal with the rulemaking implementing TILA section 129B(b)(1)(B).

The Bureau believes 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 are appropriately licensed. 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) requires the name and NMLSR ID, if any, for the creditor and the mortgage broker, if applicable. Proposed § 1026.37(k)(2) requires 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) require 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) requires an email address and phone number for each loan officer identified in proposed § 1026.37(k)(2).

Proposed comment 37(k)–1 provides a description of the NMLSR ID. Proposed comment 37(k)–1 also references 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 provides 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 clarifies 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.

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 above, Federal agencies have long recognized that certain statutorily-required disclosures, such as the finance charge and amount financed, are not effective 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. For example, as discussed below, consumer testing conducted by the Board indicates that consumers are confused about the difference between the required TILA disclosure of the ''amount financed'' and the amount of their loan or sale price of the property. Similarly, the Board-HUD Joint Report and consumer testing conducted by the Board and the Bureau indicates consumer confusion over the difference between the contract interest rate and the 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. Third, the TILA disclosures focus on the cost of credit over the entire life of the loan, which is of limited use in the context of mortgage lending since consumers generally do not hold those loans for the entire loan term. 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 is proposing to group several key metrics together on the first page of the Loan Estimate and shift others to the last page of the Loan Estimate. In addition, the

Bureau is proposing to provide 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 Bureau proposes 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 useful to consumers in evaluating the cost 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 unhelpful to consumers.

The proposed rule shifts some statutorily required disclosures from the first page because the Bureau's consumer testing shows that consumers benefit from this approach. The proposed forms focus 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. The Bureau's consumer testing confirms that consumers are able to locate the longer-term measures of the cost of credit, notwithstanding the fact that the proposed forms shift those disclosures from the first page of the disclosure. Moreover, the Bureau's consumer testing suggests 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.

Accordingly, proposed § 1026.37(l) requires creditors to disclose, under the master heading ''Additional Information About This Loan,'' information required by TILA section 128(a)(4), (5), (8), and (19) in a separate table under the heading ''Comparisons,'' along with the statement, ''Use these measures to compare this loan with other loans.'' Specifically, the table required by proposed § 1026.37(l) must contain the total payments (of 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), the annual percentage rate (APR), and the total interest percentage (TIP), as described in § 1026.37(l)(1) through (3). Pursuant to proposed § 1026.37(o) and proposed form H–24, the table required by proposed § 1026.37(l) will appear on the final page of the Loan Estimate, apart from the key loan terms identified on the first page of the Loan Estimate. Based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, as discussed above, the Bureau believes that the disclosure of these calculations on the final page of the Loan Estimate and apart from the key loan terms may enhance the overall understanding of the disclosures.

37(l)(1) In Five Years

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 calculate the total of payments amount for transactions subject to current § 1026.18(s) using the rules in current § 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 total of payments disclosure has historically been confusing for consumers. 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 11, v. 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 the Bureau understands that 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 will realistically hold the loan.

Since the Board's testing has already shown that consumers do not understand the total of payments disclosure, the Bureau's testing focused on expressions of dollar amounts that are more likely to be understood and used by consumers. 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) requires 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 clarifies 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 clarifies 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 further provides 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 provides 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 paragraph 1026.37(f). Proposed comment 37(l)(1)(i)–2 provides guidance to creditors on calculating principal and interest disclosures for loans with negative amortization features.

Second, proposed § 1026.37(l)(1)(ii) requires 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 clarifies 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.

Proposed § 1026.37(l)(1)(i) implements the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(e). The Bureau proposes 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 proposes 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). By reducing the scope of the total of payments disclosure to five years after the due date of the first periodic payment, the disclosure more accurately reflects the typical life of a mortgage loan, thus effectuating the purposes of TILA by enhancing consumer understanding of mortgage transactions. For this same reason, the proposed modification 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 and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

As discussed 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. 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 ''In 5 Years'' disclosure. 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. Industry feedback provided in response to the Bureau's Small Business Review Panel Outline stated that implementation of the ''In 5 Years'' disclosure will require additional training and systems changes, and that it is unclear that the disclosure will assist consumers. 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 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 proposes 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 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 proposed 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).

Proposed § 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 proposes this additional requirement pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). As discussed above, the Bureau believes the proposed disclosure will enhance consumer understanding of the allocation of their payments between principal and interest and 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, 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.

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 proposal, creditors would 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 days prior to consummation. See proposed § 1026.38(o)(1).

37(l)(2) Annual Percentage Rate

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).

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.

The Board-HUD Joint Report noted that consumers generally do not understand what the APR represents or how to use it, and that some consumers mistake the APR with the interest rate. Board-HUD Joint Report at 10. Consumer testing conducted for purposes of the Board's 2009 Closed-End Proposal revealed these same problems with the APR. 74 FR at 43296. The Board tested alternative descriptions and formats for the APR, but the APR continued to confuse consumers. *Id.* The Board's consumer testing also indicated that consumers did not use the APR to compare loans but, instead, focused on the interest rate, monthly payment amount, and settlement costs when comparing loan offers. *Id.* at 43296–97.

As discussed in 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. Like the prior testing, the Bureau's consumer testing indicates that consumers do not grasp the concept of the APR and often confuse it with the loan's interest rate. Most consumers confused the APR with the interest rate and misinterpreted the meaning of the disclosure. In Round 3 of the Bureau's consumer testing, the statement ''This is not your interest rate'' was added to the description of the APR to reduce consumer confusion between the interest rate and the APR. While most consumer participants understood from that statement that the interest rate and APR were separate items, they still had trouble understanding what the APR means, how it relates to the interest rate, and how it is useful as a comparison. Participants also misunderstood the APR in other ways, such as the average interest rate of other loans, an interest rate imposed once a year, and an interest rate listed by the creditor to mislead the consumer.

Pursuant to its implementation authority under TILA section 105(a), the Bureau proposes § 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.'' 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 proposes 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. As discussed above, testing conducted by the Board and 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.

Accordingly, the Bureau believes the proposed exemption may 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 that may help consumers think about their costs over their life of the loan. 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 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 believes that an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 believes that the proposed 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 believes that the proposed 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.

In response to the Bureau's Small Business Review Panel Outline, some consumer advocacy groups expressed concern about disclosing the APR on the final page of the Loan Estimate and, as discussed below, on the final page of the Closing Disclosure. 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 can be improved through an all-in APR, better descriptive language of the APR, or by supplementing the APR with other disclosures. For example, consumer advocacy groups recommended that the APR be more prominent than the

interest rate on the Loan Estimate and to be disclosed in a graphic format.

The Bureau has considered this feedback, but based on the long history of consumer confusion of 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 proposed approach to the APR could provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate. The Bureau is, however, proposing to improve the APR disclosure through a more inclusive definition of the finance charge, as discussed above, and a descriptive statement that clearly distinguishes the APR from the interest rate. The Bureau also intends to develop supplemental educational materials in booklets and its Web site 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.

37(l)(3) Total Interest Percentage

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 proposes § 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 provides 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 provide further guidance to creditors on calculation of the total interest percentage. Proposed comment 37(l)(3)–1 provides 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 provides that, for adjustable-rate mortgages, § 1026.37(l)–(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 provides 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.

As discussed in the Kleimann Testing Report, the Bureau's consumer testing indicates that consumers are able to use the total interest percentage to compare loans, and can generally recognize that better loans disclose a lower total interest percentage. Along with the ''In Five Years'' disclosure, total interest percentage was cited as the most useful comparative tool. However, some consumers did not understand the total interest disclosure and questioned why it is included on the form. Even consumers who used the total interest percentage disclosure generally did not understand the more technical aspects of the total interest percentage disclosure, such as the difficulty of using the measure in an adjustable-rate loan. 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, and in feedback received through the Bureau's Web site that the total interest percentage could be difficult to calculate and explain to consumers, and would not likely be helpful to consumer. *See, e.g.,* Small Business Review Panel Report at 20.

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 proposes to require 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 proposes 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 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 proposed 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.

Notwithstanding the proposed modifications, based on concerns raised by the Small Business Review Panel, industry feedback, and its own consumer testing, the Bureau remains 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 proposes 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 believes the proposed 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 proposed exemption 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, 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). Finally, the Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception may be appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 proposal, the Bureau believes that the proposed exemption may be appropriate. The Bureau solicits comment on the proposed exemption and, alternatively, whether the Bureau should implement the total interest percentage disclosure only in the Closing Disclosure.

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, whether the element has been required for decades or is newly imposed by Dodd-Frank, as to 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 is proposing 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 their 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)).

The Bureau believes the proposed 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 proposed 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 believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 proposal, the Bureau believes that the proposed exemptions are appropriate. The proposed 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 at 43307–08. The Board's consumer testing indicates that consumers often fail to understand that the finance charge contains both interest and fees,[172] and that consumers place very little value on the finance charge when making decisions regarding their loan.[173] The report stated that ''[testing] participants * * * generally disregarded the finance charge when reading their TILA statements.''[174]

For these reasons, the Bureau proposes to exercise 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 believes that the proposed 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 believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal

[172] 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'').

[173] 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.

[174] *Id.* at 41.

residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed 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 believes that the proposed exemption is appropriate.

Specifically, 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, the Bureau believes that 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, proposed § 1026.38(o)(2) requires creditors to disclose the finance charge on the Closing Disclosure provided to consumers at least three days prior to 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 proposing conforming amendments to § 1026.22 to reflect the accuracy standards applicable to the finance charge disclosed on the Closing Disclosure under proposed § 1026.38(o)(2). The Bureau seeks comment on whether the final rule should contain similar accuracy standards for the finance charge used in the APR calculation for the Loan Estimate.

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, the amount financed disclosure has historically been viewed as confusing for consumers. The Board-HUD Joint Report recommended removing the amount financed from consumer disclosures altogether because it ''is probably not a useful disclosure for mortgage lending.'' [175] The Board-HUD Joint Report found that the primary use of the ''amount financed'' is to help supervisory agencies confirm APR calculations, and is not a useful shopping tool for consumers.[176] The Board's consumer testing in connection with the 2009 Closed-End Proposal also indicated consumer confusion about the ''amount financed.'' Some testing participants incorrectly assumed that the ''amount financed'' was their loan amount or the sale price of the home.[177] Based on this testing, the Board concluded that the ''amount financed'' disclosure detracted from, rather than enhanced, consumers' understanding of other disclosures [178] and that consumers ''would not consider the amount financed when shopping for a mortgage or evaluating competing loan offers.'' [179] 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.' '' [180]

For these reasons, the Bureau proposes to exercise 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 believes that the proposed 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

[175] Board-HUD Joint Report at 16.

[176] *Id.* at 17.

[177] 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'' was equal to the amount of money they would be borrowing. *Id.* at 40. In Round 11, the ''amount financed'' 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 ''amount financed.'' *Id.* at 55. In Round 12, with the ''amount financed'' 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 ''amount financed.'' *Id.* at 72.

[178] 74 FR at 43308. 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.*

[179] *Id.*

[180] *Id.*

believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 believes that the proposed exemption is appropriate.

The Bureau does not believe 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 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.

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 proposal, 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 proposed § 1026.37(m), creditors 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 is provided under the master heading ''Additional Information About This Loan'' required by § 1026.37(k) and under the heading ''Other Considerations.''

As set forth below, consumers already receive most of these disclosures at or after application or prior to consummation. Thus, by incorporating all of these disclosures into the Loan Estimate, the proposed rule will reduce the number of separate disclosures that consumers receive. Instead, consumers will receive these disclosures in a single, integrated document, which will reduce the potential for information overload, promote the informed use of credit by the consumer, and facilitate compliance by industry.

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). 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).

ECOA section 701(e), as amended by the Dodd-Frank Act, and new TILA section 129H(c) and (d) will be implemented in separate Bureau and joint interagency rulemakings, respectively. However, the Bureau proposes 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 integrated TILA–RESPA final rule, the Bureau will 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.

Proposed § 1026.37(m)(1) applies 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) requires the disclosure under the label ''Appraisal.'' The disclosure may be omitted for other transactions. Proposed § 1026.37(m)(1)(i) requires 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) requires the disclosure to state that the creditor will promptly provide the consumer a copy of the appraisal, even if the transaction is not consummated. Finally, proposed § 1026.37(m)(1)(iii) requires 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 clarifies 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.

The Bureau believes that including these appraisal disclosures on the Loan Estimate is consistent with the purposes of TILA and will reduce burden on industry. Rather than requiring two separate appraisal disclosures in addition to the Loan Estimate consumers will receive after application, the Bureau believes one integrated disclosure will facilitate compliance for creditors, promote the informed use of credit by consumers, and ensure effective disclosure to consumers, consistent with the purposes of TILA and TILA section 105(a). In addition, the Bureau believes that incorporating the appraisal disclosures into the Loan Estimate in a way that is consistent with the presentation of other disclosures 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).

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).

Proposed § 1026.37(m)(2) implements 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 clarifies 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 notes 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 cites to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation as examples of entities that as a common practice condition assumability on a number of factors such as the subsequent borrower's creditworthiness. Proposed comment 37(m)(2)–1 clarifies 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 § 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 clarifies that the phrase ''original terms'' as used in § 1027.37(m)(2) does not preclude an assumption fee but may represent different terms, and provides an example of a modified term.

The Bureau proposes § 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 proposes 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 believes that consumers in transactions secured by real property would benefit from the disclosure, even if the property does not contain a dwelling. Accordingly, the proposed modification promotes the informed use of credit, consistent with the purposes of TILA. For this same reason, the proposed 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, 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 and is 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 continue to be subject to § 1026.18(q).

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 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. To reduce the number of individual disclosures provided to consumers and facilitate compliance for creditors, the Bureau proposes § 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 clarifies that the disclosure required in § 1026.37(m)(3) is optional. Proposed comment 37(m)(3)–2 clarifies 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 proposes § 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 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 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).

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.''

Proposed § 1026.37(m)(4) implements TILA section 128(a)(10) for transactions subject to § 1026.19(e) and requires 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 clarifies 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 clarifies 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 clarifies that the creditor may make changes to the disclosure to reflect the requirements imposed and alternatives allowed under State law.

The Bureau proposes § 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 proposes 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 believes 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 believes the proposed 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).

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 proposes § 1026.37(m)(5) to implement TILA section 128(b)(2)(C)(ii) for transactions subject to proposed § 1026.19(e). Based on the results of several rounds of consumer testing of language regarding the refinance disclosure, § 1026.37(m)(5) specifically requires 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.'' 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, but may not be able to refinance their loan in the future.

In implementing TILA section 128(b)(2)(C)(ii), the Bureau proposes to use its authority under section 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). Like the Board, the Bureau is 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 at 43310. Accordingly, the Bureau believes the proposed disclosure effectuates the purpose of TILA to help consumers avoid the uninformed use of credit. In addition, the proposed disclosure helps 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 will 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 continue to be subject to § 1026.18(t).

37(m)(6) Servicing

RESPA section 6(a) requires disclosures to loan applicants concerning the assignment, sale, or transfer of the servicing of the loan to another party. 12 U.S.C. 2605(a). Current appendix C to Regulation X implements RESPA section 6(a) and requires a statement in the 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.[181] Proposed § 1026.37(m)(6) requires the creditor to disclose in the Loan Estimate whether it intends to service the loan directly or transfer its servicing. Proposed comment 37(m)(6)–1 clarifies 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 proposes § 1026.37(m)(6) to implement RESPA section 6(a), pursuant to its authority under RESPA section 19(a). For transactions subject the requirements of proposed § 1026.19(e) but that are not subject to RESPA, the Bureau proposes to require creditors to provide the servicing disclosure described in § 1026.37(m)(6)

[181] 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.''

pursuant to its authority under TILA section 105(a) and Dodd-Frank Act 1032(a). The Bureau believes 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).

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, the creditor or mortgage originator 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) implements TILA section 129C(g)(3), which applies to refinance transactions. Specifically, proposed § 1026.37(m)(7) provides 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 proposes 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 believes that consumers 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 believes 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 does not believe that it is 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 proposed § 1026.2(a)(3), ''application'' is defined by proposed § 1026.2(a)(3) as the consumer's submission of certain specific information to a creditor. The requirements of TILA section 129C(g)(2) are implemented in proposed § 1026.38(p)(3).

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).

The Bureau proposes to implement the signature requirement of TILA section 128(b)(2)(B)(i) in proposed § 1026.37(n), for all transactions subject to proposed § 1026.19(e). Proposed § 1026.37(n)(1) states 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 states that if the creditor includes a line for the consumer's signature, the creditor is required to disclose to 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) requires 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 required by proposed § 1026.37(n)(2) is located under the heading ''Other Considerations'' required by proposed § 1026.37(m), labeled ''Loan Acceptance.''

Proposed comment 37(n)–1 clarifies 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 clarifies 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 clarifies 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.

The Bureau proposes 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's consumer testing indicated that consumers more easily understand from the proposed language that a signature does not bind them to accept the loan. Accordingly, the proposed modification promotes the informed use of credit, consistent with the purposes of TILA. For this same reason, the proposed 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 and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The Bureau also proposes 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 believes that consumers in all transactions subject to proposed § 1026.19(e) will 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 proposed disclosure promotes the informed use of credit, consistent with the purposes of TILA. For these same reasons, the Bureau believes that the proposed 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, 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).

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. *Id.* 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 is proposing 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 proposes 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 believes 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 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) establishes 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 clarifies 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 also clarifies that proposed § 1026.37(o)(1)(i) requires 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.

The Bureau recognizes 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 understands, 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. Mortgage creditors 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 forms in this proposal were developed as stand-alone documents through an extensive outreach and consumer testing process, as discussed above, and the Bureau is 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, it appears 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 creditors do not already effectively observe. The Bureau seeks comment, however, on whether there currently are transactions subject to proposed § 1026.19(e) that may be burdened by the adoption of this requirement.

Proposed § 1026.37(o)(1)(ii) also provides 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 clarifies 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.

37(o)(2) Estimated Disclosures

Proposed § 1026.37(o)(2) provides 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 under § 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.

37(o)(3) Form

Proposed § 1026.37(o)(3)(i) also provides 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 is proposing 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 good faith estimate 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 good faith estimate as well as the 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).[182] For this reason, the Bureau does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposes 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. *Id.* 2601(b)(1). The Bureau believes, 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 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. 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 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.

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 ''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 does not 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) provides 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 does not mandate the use of that form. Consistent with TILA section 105(b), proposed comment 37(o)(3)–1 explains 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 seeks comment 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) also provides that the disclosures may be provided in electronic form, subject to compliance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). This provision parallels existing § 1026.17(a)(1).

37(o)(4) Rounding

The prototype disclosure forms used in the Bureau's consumer testing displayed rounded numbers for certain information required to be disclosed by proposed § 1026.37. For example, rounded numbers were disclosed for the information required by proposed § 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

[182] 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).

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 disclosed without decimal places.

In the Bureau's consumer testing, using rounded numbers in this manner, consumers were able to see and evaluate the information required by the above-mentioned paragraphs of proposed § 1026.37 quickly. The Bureau is concerned that a large number of exact dollar amounts and percentages has the potential to cause information overload and reduce the overall effectiveness of the disclosure. The Bureau believes 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, participants at the Bureau's 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 believes the exact number of cents or decimal places for information required to be disclosed by the above-mentioned paragraphs of proposed § 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 proposes 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. 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. The Bureau believes this requirement ensures the meaningful disclosure of credit terms to consumers and promotes the informed use of credit. In addition, the Bureau believes 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 believes 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.

Proposed § 1026.37(o)(4)(i)(A) requires 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) requires the loan amount disclosed pursuant to proposed § 1026.37(b)(1) to be disclosed without decimal places denoting cents if the amount of cents are zero. Proposed § 1026.37(o)(4)(i)(C) requires the total monthly payment disclosed pursuant to proposed § 1026.37(c)(2)(iv) to be disclosed as a rounded number if any of its component amounts are required to be rounded. Proposed § 1026.37(o)(4)(ii) requires percentages without fractional amounts that are disclosed pursuant to proposed § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) to be disclosed without decimal places.

Proposed comment 37(o)(4)–1 provides clarifies 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 provide guidance regarding rounding amounts on the Loan Estimate.

37(o)(5) Exceptions

The Bureau's consumer testing has 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 understands 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 believes 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 from 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 proposes § 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 in 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, providing specified 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 believes providing for only specified 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 believes this requirement would effectuate the purposes of RESPA by promoting more effective advance disclosure of settlement costs.

Accordingly, proposed § 1026.37(o)(5) specifies 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) requires 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) permits 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) permits the use of a logo for, or addition of a slogan with, the information required by proposed § 1026.37(a)(3), and requires 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) permits the attachment of a business card over the information required by proposed § 1026.37(a)(3). Proposed § 1026.37(o)(5)(v) permits 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) permits the form to be translated into languages other than English. The Bureau understands 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.[183] In addition, some of the regulatory authorities in these States publish their own translations of these disclosures for use by the public.[184] The Bureau's consumer testing 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.[185] The Bureau determined that co-development of a separate non-English 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. This may be due, in part, because the Bureau intentionally pursued a more graphic than textual design for the Loan Estimate with as few words as possible. This design highlights key information and allows consumers to quickly recognize and find the key information about the transaction without large amounts of text. The differences in language did not necessitate changes to the design of the disclosure. Accordingly, the proposed rule only includes English-language disclosure forms and permits the translation of these forms. The Bureau plans to review issues surrounding translations of the integrated disclosures after issuance of this proposal. As discussed below with respect to appendix H, the Bureau solicits comment on whether the final rule should include sample Spanish-language or other non-English language forms.

Proposed comment 37(o)(5)–1 clarifies that creditors making any changes that are not expressly permitted may lose their protection from civil liability under TILA. Proposed comment 37(o)(5)–2 clarifies 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. Such completion by hand or typewriter would not exempt 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 clarifies 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 clarifies 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. Proposed comment 1026.37(o)(5)–5 clarifies the requirements of proposed § 1026.37(o) as they apply to the use of a separate page.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

Proposed § 1026.38 sets 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 integrates the disclosures currently provided in the RESPA settlement statement and the final TILA disclosure. In addition, the Closing Disclosure integrates several disclosures, including new disclosures under the Dodd-Frank Act, that otherwise would likely have been provided separately. The Bureau believes that the five-page Closing Disclosure integrates at least nine pages of disclosures. Specifically, the Closing Disclosure incorporates: (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), which were added by sections 1461 and 1462 of the Dodd-Frank Act. In addition, the Closing Disclosure incorporates 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.

As in the case of the disclosure content required by proposed § 1026.37,

[183] *See* Cal. Civ. Code §§ 1632, 1632.5, Or. Rev. Stat. § 86A.198.

[184] 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.*

[185] 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 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.*

discussed above, § 1026.38 provides that the information set forth in proposed § 1026.38(a) through (s) shall be disclosed ''as applicable.'' Accordingly, the Bureau is proposing parallel commentary under § 1026.38 to that proposed under § 1026.37. Thus, proposed comment 38–1 clarifies that a disclosure that is not applicable to a transaction generally may be eliminated entirely or may be included and marked ''not applicable'' or ''N/A.''

38(a) General Information

As with the Loan Estimate in proposed § 1026.37(a), the Bureau proposes 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).

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 settlement.

Proposed § 1026.38(a)(1) requires the creditor to use the term ''Closing Disclosure'' as the name of the integrated disclosures provided to consumers three business days prior to settlement pursuant to proposed § 1026.19(f). The Bureau believes 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 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 believes 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.

38(a)(2) Form Purpose

Proposed § 1026.38(a)(2) requires the creditor to include a statement regarding the purpose of the Closing Disclosure. Specifically, proposed § 1026.38(a)(2) requires 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.'' 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, 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, 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).

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) requires 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 believes 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).

38(a)(3)(i) Date Issued

Proposed § 1026.38(a)(3)(i) requires 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 cross-references the commentary to proposed § 1026.37(a)(4).

38(a)(3)(ii) Closing Date

Proposed § 1026.38(a)(3)(ii) requires the creditor to disclose the consummation date for the mortgage loan transaction, labeled ''Closing Date.''

38(a)(3)(iii) Disbursement Date

Proposed § 1026.38(a)(3)(iii) requires 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.''

38(a)(3)(iv) Agent

Proposed § 1026.38(a)(3)(iv) requires the identity of the settlement agent conducting the closing, labeled ''Agent.'' Proposed comment 38(a)(3)(iv)–1 clarifies 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.

38(a)(3)(v) File Number

Proposed § 1026.38(a)(3)(v) requires disclosure of the number assigned to the transaction by the closing agent for identification purposes, labeled ''File #.''

38(a)(3)(vi) Property

Proposed § 1026.38(a)(3)(vi) requires 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 cross-references 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.

38(a)(3)(vii) Sale Price

In credit transactions where there is a seller, proposed § 1026.38(a)(3)(vii)(A) requires disclosure of the contract sale price for the property identified in proposed § 1026.38(a)(3)(vi), labeled ''Sale Price.'' In transactions where there is no seller, proposed § 1026.38(a)(3)(vii)(B) requires 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 provides guidance regarding disclosing the property value when there is no seller that is a party to the transaction.

38(a)(4) Transaction Information

Proposed § 1026.38(a)(4) requires 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.'' These disclosures are currently provided in the RESPA settlement statement. See appendix A to Regulations X. In addition, TILA section 128(a)(1) and Regulation Z § 1026.18(a) require disclosure of the identity of the creditor. The Bureau believes 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 clarifies that the name and address for each consumer and seller must be provided and refers creditors to the commentary to proposed § 1026.37(a)(5) for further guidance. Proposed comment 38(a)(4)–1 also clarifies 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)(5)–2 clarifies 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 cross-references the commentary to proposed § 1026.37(a)(3) for information regarding the identification of multiple creditors.

38(a)(5) Loan Information

Proposed § 1026.38(a)(5) requires 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). The Bureau believes 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 refers the creditor to the commentary to proposed § 1026.37(a)(9) through (11) 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.''

38(a)(5)(i) Loan Term

Proposed § 1026.38(a)(5)(i) requires disclosure of the term of the loan, consistent with proposed § 1026.37(a)(8) and labeled ''Loan Term.''

38(a)(5)(ii) Purpose

Proposed § 1026.38(a)(5)(ii) requires disclosure of the purpose of the loan, consistent with proposed § 1026.37(a)(9) and labeled ''Purpose.''

38(a)(5)(iii) Product

Proposed § 1026.38(a)(5)(iii) requires disclosure of the loan product, consistent with proposed § 1026.37(a)(10) and labeled ''Product.''

38(a)(5)(iv) Loan Type

Proposed § 1026.38(a)(5)(iv) requires disclosure of the loan type, consistent with proposed § 1026.37(a)(11) and labeled ''Loan Type.''

38(a)(5)(v) Loan Identification Number

Proposed § 1026.38(a)(5)(v) requires disclosure of the loan identification number, consistent with proposed § 1026.37(a)(12) and labeled ''Loan ID #.''

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) incorporates this disclosure into the Closing Disclosure, labeled ''MIC #.''

38(b) Loan Terms

For transactions subject to proposed § 1026.19(f), proposed § 1026.38(b) implements 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 proposal, see the section-by-section analysis to proposed § 1026.37(b).

The requirements of proposed § 1026.38(b) generally mirror those of proposed § 1026.37(b). Accordingly, proposed comment 38(b)–1 directs creditors to the commentary to proposed § 1026.37(b) for guidance on the disclosures required by proposed § 1026.38(b).

38(c) Projected Payments

Proposed § 1026.38(c) implements 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 mirror those of proposed § 1026.37(c), with certain exceptions which are discussed below. Accordingly, proposed comment 38(c)–1 directs 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 its legal authority for this proposal, see the section-by-section analysis to proposed § 1026.37(c) above. As discussed below in the section-by-section analysis to proposed § 1026.38(t), the items required to be disclosed pursuant to § 1026.38 will be actual terms and costs, as required by § 1026.19(f).

Proposed § 1026.38(c) differs from proposed § 1026.37(c) in several ways. First, proposed § 1026.38(c)(2) requires an additional reference to the information required by proposed § 1026.38(l)(7). The Bureau believes, based on consumer testing, that this additional reference will 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) contains different rules for estimating escrow payments. As discussed in the section-by-section analysis to 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 incorporates these statutory provisions, but expands the requirements to all transactions subject to § 1026.37(c). However, the Bureau believes 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.

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. 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 appropriate for the Closing Disclosure.

Accordingly, the Bureau proposes 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) provides 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 clarifies 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 believes the proposed modification will 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 proposed modification will 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 will 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 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 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).

38(d) Cash To Close

Pursuant to its authority under TILA section 105(a) and Dodd-Frank section 1032(a), the Bureau proposes to require 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. Accordingly, proposed § 1026.38(d) requires 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.

38(d)(1) to (d)(6)

Under proposed § 1026.38(d)(1), the dollar amount due from the consumer is the same amount as calculated in accordance with proposed § 1026.38(j)(3)(iii) and is 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) is disclosed under proposed § 1026.38(d)(2). The total dollar amount of the other costs to be paid by the consumer at closing as calculated under proposed § 1026.38(g)(5) is disclosed under proposed § 1026.38(d)(3). The amount of lender credits disclosed under § 1026.38(h)(3) is disclosed under § 1026.38(d)(4). The sum of the amounts disclosed under § 1026.38(d)(2), 1026.38(d)(3), and 1026.38(d)(4) is disclosed with a description of ''Closing Costs'' under § 1026.38(d)(5). A statement directing the consumer to refer to the page of the Closing Disclosure that contains the tables required under § 1026.38(f) and (g) is required under § 1026.38(d)(6).

38(f),(g), and (h) Closing Cost Details

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 of Regulation X.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau to combine these RESPA disclosures with the disclosures required by TILA. However, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to also 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).

Pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a), the Bureau proposes to require 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 proposed form H–25 of appendix H to Regulation Z may 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, the Bureau is proposing a format for the disclosure of closing cost information required by proposed § 1026.38(f) and (g) that closely matches the format and organization of the closing cost information on the Loan Estimate, as required by proposed § 1026.38(t) and illustrated by proposed form H–25.

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 testing stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit 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. 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. 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. Accordingly, the format for the information required by proposed § 1026.38(f) and (g), as required by proposed § 1026.38(t) and illustrated by form H–25, also contains a two-digit line numbering system that is different than the current RESPA settlement statement.

The Bureau believes that this disclosure may 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 may 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 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.

As discussed below, proposed § 1026.38(f), (g), and (h) require 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 be disclosed under § 1026.38(f), (g), and (h), as discussed below, regardless of the person responsible for paying the cost.[186]

During the Small Business Review Panel, several settlement agents and one mortgage company requested that the

[186] The permitted itemization of closing costs under § 1026.38(f) and (g) allows creditors to provide itemizations required by State law without using additional pages. *See, e.g.,* Indiana Department of Insurance, Title Insurance Division ''New RESPA Rules and Indiana Code FAQs'' (May 1, 2010) available at *http://www.in.gov/idoi/files/Indiana_Department_of_Insurance_FAQs.pdf;* North Carolina Commissioner of Banks Memorandum ''Disclosure of Origination Fees under HUD's New RESPA Rules'' (December 3, 2010) available at *http://www.nccob.gov/public/docs/Financial%20Institutions/Mortgage/OCOB_Letter_Regarding_Disclosure_of_Origination_Fees_under_HUDs_new_RESPA_Rules.pdf;* Tex. Ins. Code Ann. art. § 2702.053 (West 2005).

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 seeks 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 in the integrated closing disclosure contemplated by this proposal, while improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

38(f) Closing Cost Details; Loan Costs

Under proposed § 1026.38(f), the closing cost details are disclosed 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 be disclosed in a table under a heading of ''Loan Costs'' in three subcategories.

38(f)(1) Origination Charges

The first subcategory of loan costs would be disclosed under the label ''Origination Charges,'' which encompasses the same items as 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 be 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 clarifies 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 clarifies that all compensation paid to a loan originator must be provided under § 1026.38(f)(1), that compensation from the creditor to a loan originator must be disclosed in the paid by others column, and 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 clarifies 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 refers to comments 36(d)(1)–1, –2, –3 and –6 for further guidance on the components of compensation a to loan originator. The Bureau believes that the origination charges disclosed under § 1026.38(f)(1) satisfies Dodd-Frank Act section 1419, which amended section 128(a) of TILA to add paragraph (18), requiring disclosure of the aggregate amount of fees paid to the mortgage originator, amount of those fees paid directly by the consumer, and any additional amount received by the originator from the creditor. As discussed above in part II.F, the Bureau currently is engaged in six other rulemakings that relate to mortgage credit and intends that the rulemakings function collectively as a whole. Accordingly, the Bureau may have to modify aspects of this proposed rule for consistency with determinations made in the other rulemakings. For example, the Bureau would 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 invites 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 proposed § 1026.37(f)(1), the Bureau is proposing to use 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 solicits comment on whether a similar exemption should be applied here.

38(f)(2) Services Borrower Did Not Shop For

The second subcategory of loan costs would be 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 disclosed under § 1026.38(f)(2). All items that were required to be disclosed under § 1026.37(f)(2), plus those items that would be disclosed under § 1026.37(f)(3) when the consumer did not shop for the service under § 1026.19(e)(1)(vi). Any additional items that were required by the creditor but were not disclosed on the Loan Estimate under § 1026.37(f)(2) would be disclosed under § 1026.38(f)(2) when the consumer did not shop for the service under § 1026.19(e)(1)(vi). Each cost would be disclosed in the appropriate column designated borrower-paid at or before closing, seller-paid charges at or before closing, or paid by others. Proposed comment 38(f)(2)–1 refers to comments 37(f)(2)–1, through –4 to provide additional guidance for the charges listed under § 1026.38(f)(2).

38(f)(3) Services Borrower Did Shop For

The third subcategory of loan costs would be disclosed under the label ''Services Borrower Did Shop For.'' The services required by the creditor but for which the consumer independently shopped are disclosed under § 1026.38(f)(3). Each cost is 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 clarifies that all items that were disclosed under § 1026.37(f)(3) that the consumer did not shop for the service under § 1026.19(e)(1)(vi) are disclosed under § 1026.38(f)(2), and not under § 1026.38(f)(3).

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 be disclosed under § 1026.38(f)(4). The costs disclosed under § 1026.38(f)(1), (2), and (3) would be subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under § 1026.38(f)(5). Proposed comment 38(f)(5)–1 clarifies that costs that are seller-paid at or before closing, or paid by others, are not subtotaled under § 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 § 1026.38(h)(2).

38(g) Closing Cost Details; Other Costs

Under proposed § 1026.38(g), all other costs in the credit transaction and the real estate transaction are disclosed in a table under the heading of ''Other Costs'' in four subcategories. Proposed comment 38(g)–1 would refer to comment 38(f)–1 and comment 37(g)–1 to provide guidance related to § 1026.38(g).

38(g)(1) Taxes and Other Government Fees

The first subcategory is disclosed under the label ''Taxes and Other Government Fees.'' The amount of recording fees and an itemization of transfer taxes would be disclosed under § 1026.38(g)(1). Proposed comment

38(g)(1)–1 refers to comments 37(g)(1)–1, –2, –3 and –4 for guidance on disclosures required under § 1026.38(g)(1).

38(g)(2) Prepaids

The second subcategory is disclosed under the label ''Prepaids.'' The items that were identified under are stated with the actual costs in the applicable columns is disclosed under § 1026.38(g)(2). Proposed comment 38(g)(2)–1 refers to comment 37(g)(2)–1 to provide guidance on disclosures required under § 1026.38(g)(2). Proposed comment 38(g)(2)–2 clarifies 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 clarifies 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 § 1026.38(g)(2) for prepaid interest. This guidance is consistent with instructions for RESPA settlement statement line 901 in appendix A of Regulation X.

38(g)(3) Initial Escrow Payment at Closing

The third subcategory is disclosed under the subheading ''Initial Escrow Payment at Closing.'' The items that were identified under § 1026.37(g)(3) are stated with their actual cost and the applicable aggregate adjustment required under 12 CFR 1024.17(d)(2) and disclosed under § 1026.38(g)(3). Proposed comment 38(g)(3)–1 clarifies 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 be disclosed with a relevant label, monthly payment amount, and number of months collected at consummation. Proposed comment 38(g)(3)–2 clarifies 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 of 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 incorporates guidance provided in appendix A to Regulation X relating to the instructions to complete the current RESPA settlement statement section 1000.

38(g)(4) Other

The fourth subcategory would be disclosed under the label ''Other.'' The services required to be performed or are to be obtained in the real estate closing by the consumer, seller, or other party are described and the costs for the services disclosed under § 1026.38(g)(4). The label for any cost that is a component of title insurance must include the description ''Title—''. The label for costs of premiums for separate insurance, warranty, guarantee, or event-coverage products must include the parenthetical ''(optional)'' at the end. Proposed comment 38(g)(4)–1 clarifies that the charges disclosed under § 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 § 1026.38. Proposed comment 38(g)(4)–2 clarifies that any owner's title insurance premium disclosed under § 1026.38(g)(4) in a jurisdiction that permits simultaneous issuance title insurance rates is 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 § 1026.38(f)(2) or (f)(3) and that the cost of a premium for an owner's title insurance policy will be 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 refers 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 § 1026.38(g)(4)(ii).

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 be disclosed under proposed § 1026.38(g)(5). The costs disclosed under § 1026.38(g)(1) through (4) are be subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under § 1026.38(g)(6). Proposed comment 38(g)(6)–1 would clarify that the only costs subtotaled under § 1026.38(g)(6) are those that are designated borrower-paid at or before closing. Charges that are other costs seller-paid at closing, seller-paid before closing, or paid by others are not disclosed under § 1026.38(g)(6), but are subtotaled under § 1026.38(h)(2).

38(h) Closing Cost Totals

38(h)(1) and (2)

Subtotals of closing costs and total closing costs paid by the consumer must be disclosed under proposed § 1026.38(h). With the label ''Total Closing Costs (Borrower-Paid),'' the total amount of consumer paid closing costs would be disclosed under § 1026.38(h)(1). With a description of ''Closing Costs Subtotal (Loan Costs + Other Costs),'' the subtotal of all charges disclosed under § 1026.38(f) and (g) in each column described in § 1026.38(f) would be disclosed under § 1026.38(h)(2). Comment 38(h)(2)–1 clarifies 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 § 1026.38(h)(2).

The Bureau proposes § 1026.38(h) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) because disclosure of this closing cost information will promote 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 proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). In addition, proposed § 1026.38(h) 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) requires the creditor to disclose the amount of credits provided by the creditor to the consumer at consummation. Proposed comment 38(h)(3)–1 provides 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 clarifies that any amounts disclosed under § 1026.38(h)(3) can also 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 incorporates guidance provided in the HUD RESPA Roundup dated April 2010.

38(h)(4)

Section 1026.38(h)(4) requires 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 would also be 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 clarifies that the creditor would be 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 be considered to be in compliance with § 1026.38(h)(4).

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 GFE.

Consequently, and 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 proposing to require 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).

The ''Calculating Cash to Close'' table in the Closing Disclosure under proposed § 1026.38(i) mirrors the format of, and updates the amounts shown on, the ''Calculating Cash to Close'' table in the Loan Estimate under proposed § 1026.37(h). The Bureau believes that including separate ''Calculating Cash to Close'' tables on both the Loan Estimate and the Closing Disclosure will aid 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 are 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 includes additional information under the subheading ''Did this change?'' which is 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, 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 has 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.

Requiring disclosure of the ''Calculating Cash to Close'' table also complements proposed § 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 closing,'' however, and the Bureau understands that it typically is given the day of closing. As discussed above, proposed § 1026.19(f)(1)(ii) merges the two provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. 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. 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. This will 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 to be disclosed on the Closing Disclosure under § 1026.38(i) consists of four columns and nine rows. The first column, which does not have a subheading, includes labels for the amounts of cash to close (listed in the final row of the table, in more prominent fashion) and its critical components. Total closing costs, which are listed in the first row, is 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 list 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,'' includes the estimated amounts of cash to close and its components. These amounts match the estimates given on the ''Calculating Cash to Close'' table in the Loan Estimate, which are shown to the nearest whole dollar amount. The third column, under the subheading ''Final,'' includes 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 are shown as positive numbers, and the amounts that reduce the total cash to close amount are shown as negative numbers. The fourth column, under the subheading ''Did this change?'' contains 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 discusses 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) is disclosed more prominently than the other disclosures under § 1026.38(i). The proposed comment clarifies that this more prominent statement can take the form, for example, of a ''Yes'' or ''No'' disclosed in capital letters and boldface font, as shown on the Closing Disclosure form H–25 set forth in appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). The comment also discusses 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 describes how a final amount shown to two decimal places on the ''Calculating Cash to Close'' table disclosed under § 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 clarifies 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 provides an example of how a contrary rule could result in inaccurate disclosures of increases. The proposed comment reflects 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 provide guidance regarding the statements required by each of § 1026.38(i)(4)(iii)(A), 1026.38(i)(5)(iii)(A), 1026.38(i)(6)(iii)(A), 1026.38(i)(7)(iii)(A), and 1026.38(i)(8)(iii)(A) that the consumer should see the details disclosed pursuant to another subsection or other subsections within § 1026.38, or that an amount has increased or decreased from an estimated amount, as applicable. The comments note 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 can 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 in appendix H.

38(i)(1) Total Closing Costs

Proposed § 1026.38(i)(1)(i) and (ii) requires the disclosure of a comparison of the consumer's estimated and actual ''Total Closing Costs'' amounts. The estimated ''Total Closing Costs'' amount is 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 matches the ''Total Closing Costs'' amount that is disclosed on the Loan Estimate under proposed § 1026.37(g)(6). The actual ''Total Closing Costs'' amount is the same amount disclosed on the Closing Disclosure under § 1026.38(h)(1), reduced by the amount of any lender credits disclosed under § 1026.38(h)(3). Proposed comment 38(i)(1)(i)–1 provides guidance regarding the requirement under § 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) specifies 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 § 1026.38(f)(4) and (g)(5), and must include a reference to such disclosures, as applicable. This language is 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 must also state the dollar amount of any excess amount of closing costs above the limitations on increases in closing costs under § 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 to be disclosed must reflect the different methods of calculating such excess amounts under § 1026.19(e)(3)(i) and (ii). Proposed comment 38(i)(1)(iii)(A)–1 contains examples of how to calculate such excess amounts

and clarifies that because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 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 § 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 clarifies 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 complement commentary to proposed § 1026.19(e)(3). Pursuant to proposed § 1026.19(f)(2)(v), the creditor or closing agent must refund to the consumer any such excess amounts at consummation or within thirty days thereafter. Accordingly, this 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 thirty days thereafter.

38(i)(2) Closing Costs Subtotal Paid Before Closing

Proposed § 1026.38(i)(2) requires 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'' must be disclosed as $0. Proposed comment 38(i)(2)(i)–1 clarifies 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'' is 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) specifies 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 is 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 provides guidance regarding the requirement to disclose whether the estimated and final amounts are equal.

38(i)(3) Closing Costs Financed

Proposed § 1026.38(i)(3) requires 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 is 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 reflects any changes to the amount previously disclosed on the Loan Estimate. Proposed § 1026.38(i)(3)(iii) specifies 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 believes this explanatory language will be 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. The Bureau believes this disclosure may assist consumers in understanding that the financed portion of the closing costs are paid for through the loan proceeds.

38(i)(4) Downpayment/Funds From Borrower

Proposed § 1026.38(i)(4) requires the disclosure of a comparison of the estimated and actual amounts of the ''Downpayment/Funds from Borrower.'' Downpayment and funds from borrower are related concepts, but downpayment 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 ''Downpayment/Funds from Borrower'' amount is 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 ''Downpayment/Funds from Borrower'' is 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 ''Funds from Borrower'' is 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 yields 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 provides an example of the downpayment changing in a particular transaction. Proposed comment 38(i)(4)(ii)(B)–1 provides further clarification about how the actual ''Funds from Borrower'' amount is determined under § 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) specifies that if the actual amount of ''Downpayment/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 is 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 clarifies 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 notes 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 is intended to direct the consumer to the section within the Closing Disclosure containing the information that accounts for the increase in the ''Downpayment/Funds from Borrower'' amount.

38(i)(5) Deposit

Proposed § 1026.38(i)(5) requires the disclosure of a comparison of the estimated and actual amounts of the ''Deposit.'' The estimated ''Deposit'' amount is 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 is the same amount that is disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(ii). Proposed § 1026.38(i)(5)(iii) specifies 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 is intended to direct the consumer to the section within the Closing Disclosure containing the itemization of the deposit in the Closing Disclosure.

38(i)(6) Funds for Borrower

Proposed § 1026.38(i)(6) requires the disclosure of a comparison of the estimated and actual amounts of the ''Funds for Borrower.'' Like proposed § 1026.37(h)(5), this amount is intended to generally represent the amount to be disbursed to the consumer or used at 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'' is made under proposed § 1026.38(i)(6)(iv). The estimated ''Funds for Borrower'' amount disclosed under § 1026.38(i)(6)(i) is 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) provides that the actual ''Funds for Borrower'' amount disclosed is determined pursuant to § 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) is necessary since that amount of the credit extended has already been accounted for in the cash to close calculation by inclusion in § 1026.38(i)(3)(ii). If such calculation yields a negative number, then the negative number is disclosed under proposed § 1026.38(i)(6)(ii); otherwise, $0.00 is disclosed.

Proposed comment 38(i)(6)(ii)–1 provides 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) clarifies 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 is intended to remind the consumer that a different amount of loan proceeds will be available following payoff of existing loans.

38(i)(7) Seller Credits

Proposed § 1026.38(i)(7) requires the disclosure of a comparison of the estimated and actual amounts of the ''Seller Credits.'' ''Seller Credits'' are described in proposed 1026.38(j)(2)(v) and corresponding commentary. The estimated ''Seller Credits'' amount is 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 is the same amount disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(v). Proposed comment 38(i)(7)(ii)–1 clarifies 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) specifies 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 is intended to direct the consumer to the section within the Closing Disclosure containing the itemization of seller credits.

38(i)(8) Adjustments and Other Credits

Proposed § 1026.38(i)(8) requires the disclosure of a comparison of the estimated and actual amounts of the ''Adjustments and Other Credits.'' ''Adjustments and Other Credits'' are 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 is 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 is 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 paid already 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) specifies 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 is 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 gives examples of items that may be adjustments and other credits, and clarifies that if the calculation required by § 1026.38(i)(8)(ii) yields a negative

number, the creditor or closing agent discloses it as such.

38(i)(9) Cash To Close

Proposed § 1026.38(i)(9) requires the disclosure of a comparison of the estimated and actual amounts of the ''Cash to Close.'' The estimated ''Cash to Close'' amount is 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 is 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 are 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 clarifies 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 clarifies that if the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses it as such. Proposed comment 38(i)(9)(ii)–2 discusses 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 clarifies that this more prominent disclosure can take the form, for example, of boldface font, as shown on the Closing Disclosure form H–25.

38(j) and (k) Summaries of Borrower's and Seller's Transactions

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.

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 will also assist sellers in understanding the charges they are required to pay under the sales contract. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the addition of the summaries of the consumer's and seller's transactions 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. Therefore, the Bureau proposes to exercise 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 would be set forth in § 1026.38(j) and the required information regarding the seller's transaction would be set forth in § 1026.38(k). Furthermore, for the reasons stated above, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). The Bureau is not proposing to alter the current method for calculating these summaries as currently provided in appendix A to Regulation X except as specifically described below. However, based on the results of consumer testing, the Bureau is proposing to revise the wording of headings, labels, and references to make them more understandable for consumers.

In addition, 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 significantly detract 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 analysis of proposed § 1026.38(f) and (g), the use of this two-digit line numbering system for the information required by proposed § 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 analysis of proposed § 1026.38(f) and (g) 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 seeks 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 improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

38(j) Summary of Borrower's Transaction

Proposed § 1026.38(j) requires 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 lists the information that must be provided under the subheading ''Borrower's Transaction.'' Proposed comment 38(j)–1 clarifies that it is permissible to give two separate Closing Disclosures to the consumer and seller. This comment incorporates guidance

provided in the HUD RESPA FAQs p. 44, #4 (''HUD–1—''General''). Comment 38(j)–2 clarifies that additional lines can be added to the Closing Disclosure to show customary recitals and information used locally in real estate closings. This comment incorporates guidance provided in HUD RESPA FAQs p. 44, #5 and #10 (''HUD–1—General''). Proposed comment 38(j)–3 clarifies that the amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and § 1026.38(k)(1)(ii); § 1026.38(j)(1)(iii) and § 1026.38(k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and § 1026.38(k)(1)(iv); § 1026.38(j)(1)(vii) and § 1026.38(k)(1)(vi); § 1026.38(j)(1)(viii) and § 1026.38(k)(1)(vii); § 1026.38(j)(1)(ix) and § 1026.38(k)(1)(viii); § 1026.38(j)(1)(x) and § 1026.38(k)(1)(ix); § 1026.38(j)(2)(iv) and § 1026.38(k)(2)(iv); § 1026.38(j)(2)(v) and § 1026.38(k)(2)(vii); § 1026.38(j)(2)(viii) and § 1026.38(k)(2)(x); § 1026.38(j)(2)(ix) and § 1026.38(k)(2)(xi); § 1026.38(j)(2)(x) and § 1026.38(k)(2)(xii); and § 1026.38(j)(2)(xi) and § 1026.38(k)(2)(xiii).

38(j)(1) Itemization of Amount Due From Borrower

Proposed § 1026.38(j)(1)(i) requires 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 § 1026.38(j)(1)(ii) through (x), excluding items paid from funds other than closing funds defined under § 1026.38(j)(4)(i). Below this label § 1026.38(j)(ii) requires 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 must also be provided by the creditor or closing agent. Proposed comment 38(j)(1)(ii)–1 clarifies 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 are not considered personal property for purposes of § 1026.38(j)(1)(ii). This comment incorporates guidance currently provided in the instructions for RESPA settlement statement line 102 in appendix A to Regulation X. Proposed § 1026.38(j)(1)(iii) requires the creditor or closing agent to provide a reference to the sales price of any tangible personal property included in the sale that are not included in the sales price disclosed under § 1026.38(j)(1)(ii).

Proposed § 1026.38(j)(1)(iv) requires 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) requires 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) requires 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 clarifies 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 to show the treatment of a security deposit. Proposed comment 38(j)(1)(v)–2 clarifies costs owed by the consumer not otherwise disclosed under § 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) requires the creditor or closing agent to provide a reference to adjustments paid by seller in advance. Proposed § 1026.38(j)(1)(vii) requires 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) requires 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) requires 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) requires 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 clarifies that amounts disclosed under § 1026.38(j)(1)(x) could be for additional taxes not disclosed under § 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 incorporates instructions for RESPA settlement statement lines 106–112 in appendix A to Regulation X.

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

Proposed § 1026.38(j)(2)(i) requires 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) requires 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 clarifies that the deposit is any amount paid into a trust account by the consumer under the contract of sale for real estate. This is 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 downpayment or funds from the consumer disclosed under § 1026.38(i)(4) may also be paid prior to closing. To differentiate between the downpayment amount and the deposit amount in § 1026.38(i)(4), the amount of the deposit needs to be specified separately from other payments by the consumer against the sales price prior to

closing. Proposed comment 38(j)(2)(ii)–2 clarifies 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 will be designated as borrower-paid before closing under § 1026.38(f)(1) or (g)(1), as applicable.

Proposed § 1026.38(j)(2)(iii) requires 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 clarifies that 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 incorporates 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) requires the creditor or closing agent to provide a reference to existing loans assumed or taken subject at closing to by the consumer and the amount of those loans. Proposed comment 38(j)(2)(iv)–1 clarifies that the amount disclosed under § 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, must be disclosed under § 1026.38(j)(2)(iv). This comment incorporates guidance currently provided in the instructions for RESPA settlement statement line 203 in appendix A to Regulation X.

Proposed § 1026.38(j)(2)(v) requires 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 § 1026.38(f)(1) and (g)(1), as applicable. Proposed comment 38(j)(2)(v)–1 clarifies 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 reflected with a seller-paid designation under § 1026.38(f)(1) or (g)(1), as applicable. Proposed comment 38(j)(2)(v)–2 clarifies 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 § 1026.38(j)(2)(v).

Proposed § 1026.38(j)(2)(vi) requires 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 § 1026.38(j)(2), (f)(1), (g)(1), or (h)(3). Proposed comment 38(j)(2)(vi)–1 clarifies that any amounts disclosed under § 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 closing would be reflected with a paid by other party designation under § 1026.38(f)(1) or (g)(1). For example, a credit from a real estate agent would be listed as a credit along with a description of the rebate and include the name of the party giving the credit. This comment incorporates guidance provided by HUD RESPA FAQs p. 47–48, #4 (''HUD–1—200 series'').

Proposed comment 38(j)(2)(vi)–2 clarifies 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 must be disclosed with a brief explanation. If the net proceeds of the loan are less than the principal amount, the net proceeds may be listed on the same lines as the principal amount. This comment incorporates 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 clarifies that any amounts disclosed under § 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 must be disclosed with a statement that such amounts were paid outside of closing under § 1026.38(j)(4). This comment incorporates 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 clarifies that any amounts disclosed under § 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 incorporates guidance provided by the HUD RESPA FAQs p. 47, #3 (''HUD–1—200 series''). Proposed comment 38(j)(2)(vi)–5 clarifies 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.

Proposed § 1026.38(j)(2)(vii) requires the creditor or closing agent to provide a reference to adjustments for items unpaid by seller. Proposed § 1026.38(j)(2)(viii) requires 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 dues from the seller at closing. Proposed § 1026.38(j)(2)(ix) requires 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) requires 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) requires 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 clarifies that any amounts disclosed under § 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.

38(j)(3) Calculation of Borrower's Transaction

Proposed § 1026.38(j)(3) requires the creditor or closing agent to disclose the label ''Calculation.'' Proposed § 1026.38(j)(3)(i) requires 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) requires the creditor or closing agent to provide a reference to the total amount paid already 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) requires 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 clarifies 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 clarifies that the amount disclosed under § 1026.38(j)(3)(iii) is the sum of the amounts disclosed under § 1026.38(j)(3)(i) and (ii). If the result is positive, the amount is due from the consumer. If the result is negative, the amount is due to the consumer.

38(j)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(j)(4)(i) requires 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 clarifies 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 incorporates guidance provided by the general instructions for the RESPA settlement statement in appendix A to Regulation X. Proposed comment 38(j)(4)(i)–2 clarifies that charges paid outside of closing funds are not included in computing totals under § 1026.38(j). Proposed § 1026.38(j)(4)(ii) would define closing funds to mean fund collected and disbursed at closing for purposes of § 1026.38(j).

38(k) Summary of Seller's Transaction

Proposed § 1026.38(k) would require that the creditor or closing agent provide the summaries of the seller's transaction in a separate tables under the heading ''Summaries of Transactions'' required under § 1026.38(j). Proposed § 1026.38(k) also lists the information that must be provided under the subheading ''Seller's Transaction.'' Proposed comment 38(k)–1 clarifies that § 1026.38(k) does not apply in transaction where there is no seller, such as a refinance transaction. Proposed comment 38(k)–2 clarifies that § 1026.38(k) refers to comment 38(j)–2 related to the use of addendums to the Closing Disclosure. Proposed comment 38(k)–3 refers to comment 38(j)–3 for guidance on the amounts disclosed under certain provisions of § 1026.38(k) that are the same as the amounts disclosed under certain provisions of § 1026.38(j).

38(k)(1) Itemization of Amounts Due to Seller

Proposed § 1026.38(k)(1)(i) requires 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 § 1026.38(k)(1)(ii) through (ix), excluding items paid from funds other than closing funds as described in § 1026.38(k)(4)(i). Below this label, § 1026.38(k)(1)(ii) requires 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 must also be provided by the creditor or closing agent.

Proposed § 1026.38(k)(1)(iii) requires 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 § 1026.38(k)(ii). Proposed comment 38(k)(1)(iii)–1 clarifies that guidance regarding the classification of personal property is provided at § 1026.38(j)(1)(ii) and comment 38(j)(1)(ii)–1.

Proposed § 1026.38(k)(1)(iv) requires 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) requires 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) requires 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) requires 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) requires 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) requires 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.

38(k)(2) Itemization of Amounts Due From Seller

Proposed § 1026.38(k)(2)(i) requires the creditor or closing agent to disclose 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 § 1026.38(k)(2)(ii) through (xiii), excluding items paid from funds other than closing funds as described in § 1026.38(k)(4)(i). Below this label, § 1026.38(k)(2)(ii) would require the creditor or closing agent to provide a reference to the amount of excess deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, the payoff amount of first mortgage loan, the payoff of second mortgage loan, seller credit, and adjustments for items unpaid by seller. Proposed comment 38(k)(2)(ii)–1 clarifies 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 clarifies that any amounts of the deposit that were disbursed to the seller prior to closing must be disclosed under § 1026.38(k)(2)(ii).

Proposed § 1026.38(k)(2)(iii) requires the creditor or closing agent to provide a reference and amount of the subtotal closing costs paid at closing by seller as calculated under § 1026.38(h)(1). Proposed § 1026.38(k)(2)(iv) requires 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 clarifies that the amount of the outstanding balance of any lien that the consumer is assuming or taking title subject and is to be deducted from the sales price must be disclosed under § 1026.38(k)(2)(iv).

Proposed § 1026.38(k)(2)(v) would require 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 require 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.

Proposed § 1026.38(k)(2)(vii) requires 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 § 1026.38(f)(1) and (g)(1), as applicable. Any costs disclosed as seller-paid at or before closing under § 1026.38(f)(1) and (g)(1) are not disclosed under § 1026.38(k)(vii). Proposed comment (k)(2)(vii)–1 clarifies 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, are disclosed under § 1026.38(k)(2)(vii).

Proposed § 1026.38(k)(2)(viii) requires the creditor or closing agent to provide a description and the amount or 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 clarifies that amounts that must be paid in order to satisfy other seller obligations to clear title to the property must be disclosed under § 1026.38(k)(2)(viii). Proposed comment 38(k)(2)(viii)–2 clarifies that the satisfaction of existing liens by the consumer that are not deducted from the sales price are disclosed under § 1026.38(k)(2)(viii) and must be disclosed as paid outside of closing under § 1026.38(k)(4)(i). This guidance tracks comment 38(j)(2)(vi)–2, and incorporates guidance provided by the HUD RESPA Roundup dated December 2010. Proposed comment 38(k)(2)(viii)–3 clarifies 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 § 1026.38(k)(2)(viii), and that subsequent disclosure of the amounts paid after consummation is optional. This guidance is consistent with the instructions for RESPA settlement statement lines 506 to 509 in appendix A to Regulation X.

Proposed § 1026.38(k)(2)(ix) requires the creditor or closing agent to provide a reference to adjustments for items unpaid by seller. Proposed § 1026.38(k)(2)(x) requires 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) requires 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 assessments due from the seller at closing. Proposed § 1026.38(k)(2)(xii) requires 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 require 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.

38(k)(3) Calculation of Seller's Transaction

Proposed § 1026.38(k)(3) would require the creditor or closing agent to disclose the subheading ''Calculation.'' Proposed § 1026.38(k)(3)(i) requires the creditor or closing agent to provide a reference to total due to seller at closing and the amount described under § 1026.38(k)(1)(i). Proposed § 1026.38(ii) requires the creditor or closing agent to provide a reference to total due from seller at closing and the amount described as a negative number under § 1026.38(k)(2)(i).

Proposed § 1026.38(k)(3)(iii) requires the creditor or closing agent to provide a reference to 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 clarifies 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. Comment 38(k)(3)(iii)–2 clarifies that the amount disclosed under § 1026.38(k)(3)(iii) is the sum of the amounts disclosed under § 1026.38(k)(3)(i) and the amount disclosed under § 1026.38(k)(ii). If the result is positive, the amount is due to the seller. If the result is negative, the amount is due from the seller.

38(k)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(k)(4)(i) requires the creditor or closing agent to state amounts paid outside of closing with the phrase ''paid outside closing'' or ''P.O.C.'' and that closing funds are funds collected and disbursed at consummation by the creditor or closing agent. Proposed § 1026.38(k)(4)(ii) would define closing funds to mean funds collected and disbursed at consummation for purposes of § 1026.38(k).

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 required by proposed § 1026.19(f), these disclosure requirements must be grouped together under the master heading ''Additional Information About This Loan'' and under the heading ''Loan Disclosures.''

38(l)(1) Assumption

Proposed § 1026.38(l)(1) implements 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 proposal, see the section-by-section analysis to proposed § 1026.37(m)(2).

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 the Bureau's implementation authority under TILA section 105(a), proposed § 1026.38(l)(2) incorporates 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) must be labeled ''Demand Feature.'' Proposed comment 38(l)(3)–1 provides 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).

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 does 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). By exempting disclosure of information that will not be useful to consumers, the disclosure effectuates the purposes of TILA by enhancing consumer understanding of mortgage transactions, consistent with TILA section 105(a). Similarly, the Bureau has considered the factors in TILA section 105(f) and believes that an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Furthermore, the proposed 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 the public, consistent with Dodd-Frank Act section 1405(b).

38(l)(3) Late Payment

TILA section 128(a)(10) requires disclosure of any dollar charge or percentage amount which 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) implements 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. For a detailed description of the Bureau's implementation of TILA section 128(a)(10) and the legal authority for this proposal, see the section-by-section analysis to proposed § 1026.37(m)(4).

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 proposes § 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) requires 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) requires 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) requires 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) are located under the subheading ''Negative Amortization (Increase in Loan Amount).''

38(l)(5) Partial Payment Policy

TILA section 129C(h), added by section 1414(d) of the Dodd-Frank Act, provides that, in any residential mortgage loan, the creditor must disclose, prior to consummation 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 proposes § 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).[187] Specifically, § 1026.38(l)(5) requires 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. 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

[187] The disclosure requirements of TILA section 129C(h) that apply after consummation are implemented in proposed § 1026.39.

escrow account for partial payments and whether any penalties apply.

38(l)(6) Security Interest

TILA section 128(a)(9) requires the creditor to provide a statement that a security interest 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 proposes § 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). Specifically, if the creditor will take a security interest in the property that is the subject of a mortgage loan transaction, proposed § 1026.38(l)(6) requires the creditor to disclose 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) is located under the subheading ''Security Interest.''

The Bureau proposes 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 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 believes 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 believes 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).

38(l)(7) Escrow Account

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). In particular, 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. Under TILA section 129D(b), however, application of the 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, the Board's 2011 Escrows Proposal proposed to implement the new TILA escrow requirements. Although the Bureau expects to implement most aspects of that proposal in a separate rulemaking, there are certain key disclosures in the Board's 2011 Escrows Proposal that complement the integrated Closing Disclosure. Thus, the Bureau proposes to implement those disclosure requirements in proposed § 1026.38(l)(7).

Like the Board's 2011 Escrows Proposal, the Bureau proposes to apply the TILA section 129D escrow requirements to all transactions subject to proposed § 1026.19(f) even if the disclosures are not mandated by TILA section 129D(b). In doing so, the Bureau relies 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 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 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), 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).

Accordingly, the Bureau proposes to implement the disclosure requirements of TILA section 129D(h) and (j) 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) 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,'' proposed § 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. Proposed § 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 described in § 1026.37(c)(4)(ii), labeled ''Escrowed Property Costs over Year 1,'' together with a descriptive name of 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 of 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 § 1026.37(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*) 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. Proposed comment 38(l)(7)(i)(A)(*2*)–1 and 38(l)(7)(i)(A)(*4*)–1 provide guidance to creditors on the calculation of the itemized amounts disclosed pursuant to § 1026.38(l)(7)(i)(A).

Proposed § 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 require or offer them, the disclosure must state that fact. Proposed § 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, proposed § 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 in § 1026.38(l)(7)(i)(B) are under the ''For now'' reference required in § 1026.38(l)(7)(i). Proposed comment 38(l)(7)(i)(B)(1)–1 provides guidance to creditors on calculation of the amounts required to be disclosed pursuant to § 1026.38(l)(7)(i)(B).

Under the subheading ''Escrow Account'' required by proposed § 1026.38(l)(7) and under the reference ''In the future,'' proposed § 1026.38(l)(7)(ii) requires information about future requirements for property costs. Specifically, proposed § 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. Proposed § 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. Proposed § 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).

38(m) Adjustable Payment Table

For transactions subject to proposed § 1026.19(f), the Bureau proposes § 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) requires creditors to disclose on the Closing Disclosure the Adjustable Payment table required by proposed § 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 includes: 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. 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 to proposed § 1026.37(i).

The requirements of proposed § 1026.38(m) mirror those of proposed § 1026.37(i). Accordingly, proposed comment 38(m)–1 directs 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 clarifies 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 clarifies 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 clarifies that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(m).

38(n) Adjustable Interest Rate Table

For transactions subject to proposed § 1026.19(f), proposed § 1026.38(n) uses 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 proposed § 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 includes: (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. 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 to proposed § 1026.37(j) above.

The requirements of proposed § 1026.38(n) mirror those of proposed § 1026.37(j). Accordingly, proposed comment 38(n)–1 directs 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 clarifies 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 proposed § 1026.37(j), the other requirements applicable to proposed § 1026.37(j) apply to proposed § 1026.38(n). Proposed comment 38(n)–3 clarifies that the prohibition against presenting the table required by proposed § 1026.37(j) if the interest rate will not change after consummation applies to proposed § 1026.38(n). Proposed comment 38(n)–4 clarifies that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(n).

38(o) Loan Calculations

Proposed § 1026.38(o) requires 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) must 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) will appear on the final page of the Closing Disclosure, apart from key loan terms identified on the first page of the Closing Disclosure. Based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, the Bureau believes 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.

As discussed above, 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. 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. 74 FR at 43293–98, 43306–09. The Bureau requests comment on whether the disclosures in § 1026.38(o) 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, as set forth below.

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.

Proposed § 1026.38(o)(1) implements 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) 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. Proposed comment 38(o)(1)–1 clarifies 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 refers creditors to comment 37(1)(1)(i)–1 for guidance on the amounts included in the total of payments calculation.

As discussed in the section-by-section analysis to proposed § 1026.37(l), consumers have historically misunderstood the total of payments disclosure and do not use it when evaluating their loan. Accordingly, for the reasons set forth in the section-by-section analysis to proposed § 1026.37(l)(1)(i), the Bureau proposes 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. Instead, the Bureau proposes 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 proposed § 1026.37(f). The Bureau proposes 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). 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 proposed § 1026.37(l)(1)(i) will ease compliance burden for creditors. The Bureau believes this proposed 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).

The proposed 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,'' using that term, 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 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 proposed § 1026.4.

The Bureau proposes § 1026.38(o)(2) to implement TILA section 128(a)(3) and (8) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Proposed § 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,'' in the table required by proposed § 1026.38(o). Proposed comments 38(o)(2)–1 and –2 provide guidance to creditors on how to disclose and calculate the finance charge. The proposed rule does not allow 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 believes that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors. Proposed § 1026.38(o)(2) also provides 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, as discussed in the section-by-section analysis to proposed § 1026.4 above, the Bureau solicits comment on whether and the amount by which this tolerance should be raised in light of the expanded definition of the finance charge for closed-end transactions secured by real property or a dwelling.

The Bureau proposes 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. 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 proposed exception is appropriate. Here, the proposed 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 proposed § 1026.19(f). As discussed in the section-by-section analysis to proposed § 1026.37(l), consumers generally do not understand the finance charge and do not use it when making decisions about their loan. Accordingly, 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 proposed § 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.

The Bureau also proposes this exception 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 believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 believes that the proposed 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 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)(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 proposes 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) requires creditors to disclose the amount financed, using that term, together with the descriptive statement, ''the loan amount available after paying your upfront finance charge.'' Based on consumer testing, the Bureau believes this approach is appropriate to serve TILA's purpose of assuring a meaningful disclosure of credit terms. Proposed comment 38(o)(3)–1 clarifies 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.

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).

Proposed § 1026.38(o)(4) implements 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.'' For the reasons discussed in the section-by-section analysis to proposed § 1026.37(l)(2), the Bureau proposes 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).

As discussed in the section-by-section analysis to proposed § 1026.37(l), in response to the Bureau's Small Business Review Panel Outline, some consumer advocates expressed concern about disclosing the APR on the final page of the Closing Disclosure and suggested that the APR should be more prominently displayed on the disclosure. The Bureau has considered this feedback, but for the reasons discussed above, believes that the proposed approach to the APR 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.

38(o)(5) Total Interest Percentage

As discussed in the section-by-section analysis to proposed § 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.

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed § 1026.38(o)(5) implements 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 refers creditors to the disclosure of 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 to proposed § 1026.37(l)(3), the Bureau proposes 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.''

Concerns were raised during the Small Business Review Panel, by industry feedback provided in response to the Small Business Review Panel Outline, and in feedback received through the Bureau's Web site that the total interest percentage would be difficult to calculate and explain to consumers, would not likely be helpful to consumers, and may distract consumers from more important disclosures. See Small Business Review Panel Report at 20. In particular, industry feedback provided in response to the Bureau's Small Business Review Panel Outline noted that the disclosure will always be inaccurate in an adjustable-rate loan and in any loan that is paid off before final maturity.

Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau alternatively proposes 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's rationale for the proposed exemption is found in the section-by-section analysis to proposed § 1026.37(l)(3). The Bureau solicits comment on the proposed exemption.

38(o)(6) Approximate Cost of Funds

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.''

The Bureau notes several interpretive challenges in TILA section 128(a)(17). First, the statute refers to an ''amount'' of a ''rate,'' whereas amounts are typically absolute, while rates are typically expressed as percentages. Second, the intended meaning of the phrase ''wholesale rate of funds'' is unclear. Wholesale transactions have historically had a ''wholesale rate,'' which is generally the rate at which a wholesale lender is willing to extend credit to a particular consumer, before any increase to recoup compensation paid to a mortgage broker. The resulting increased rate is the ''retail rate'' paid by the consumer. However, there are other components of overall pricing such as discount points and other up-front charges, which calls into question the use of the term ''wholesale rate'' as a meaningful disclosure.

The Bureau is unaware of the phrase ''wholesale rate of funds'' having a known standard usage in the mortgage industry. ''Wholesale'' generally is used by industry participants to refer to loans made through mortgage brokers, as opposed to loans made directly by the creditor through its own employees, which are commonly referred to as ''retail'' originations. Yet, there is

nothing in TILA section 128(a)(17) limiting its applicability to wholesale transactions. In addition, the meaning of the term ''rate of funds'' is unclear.

In light of these uncertainties, the Bureau proposes to interpret the ''wholesale rate of funds'' to mean the actual cost of borrowing funds for use in mortgage lending. 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. First, the Bureau conducted consumer testing using the phrase ''lender cost of funds,'' which was the actual cost of funds used to make mortgage loans. Consumers were generally unable to understand or use this disclosure, and the Bureau received significant negative feedback about this disclosure from industry representatives. Second, the Bureau conducted consumer testing using the phrase ''average cost of funds,'' which is an average or approximate cost of funds in lieu of the creditor's actual costs. Again, consumers were unable to use or understand this disclosure, and the Bureau received negative industry feedback. 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 unable to articulate how to use the information. During five rounds of consumer testing, only one consumer showed any interest in the disclosure, stating that it was ''interesting,'' but did not use it to evaluate the loan. All other consumers were either confused by the disclosure or simply did not find it helpful. Several consumers expressed a feeling of offense in reaction to the cost of funds. Industry participants also believed that consumers would be confused by the cost of funds disclosure.

Accordingly, the Bureau is soliciting 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) requires 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'' means 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 solicits comment on whether another index, such as the London Interbank Offer Rate (LIBOR), would be a more appropriate measure of the approximate cost of funds. The Bureau also solicits comment on what would be required for creditors to disclose their actual costs of funds.

Based on consumer testing, the Bureau believes that consumer understanding of the cost of funds disclosure will be enhanced through the descriptive statement, consistent with the purposes of TILA, and will improve consumer awareness and understanding of residential mortgage loans, which 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 of the cost of funds 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, consistent with section 1032(a) of the Dodd-Frank Act.

Notwithstanding these proposed modifications, 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. In addition, based on concerns raised by the Small Business Review Panel, industry feedback provided in response to the Bureau's Small Business Review Panel Outline, and feedback provided through the Bureau's Web site, the Bureau believes that the disclosure may be very burdensome for creditors to calculate and explain, and that consumers would not find the disclosures helpful. See Small Business Review Panel Report at 20. Accordingly, the Bureau remains concerned that the cost of funds disclosure may not be a useful tool for consumers and could create confusion and contribute to information overload. Consistent with the recommendation of the Small Business Review Panel, the Bureau alternatively proposes 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 believes the proposed 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 proposed 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 believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes 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 believes that the proposed 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 proposed 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 proposal, the Bureau believes that the proposed exemption may be appropriate. The Bureau solicits comment on this proposed exemption.

38(p) Other Disclosures

As discussed below, proposed § 1026.38(p) implements statutory provisions requiring creditors to disclose information regarding appraisals, contract details, liability after foreclosure, refinancing, and tax deductions. Under the proposal, these disclosures would be provided under the heading ''Other Disclosures.''

38(p)(1) Appraisal

As noted above in the discussion of proposed § 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 are being implemented in separate Bureau and joint interagency rulemakings, respectively. Although the Bureau is not implementing these statutory provisions through this proposed rule, the Bureau is proposing 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). The Bureau intends to harmonize these requirements with the final rules implementing the statutory appraisal disclosure requirements at the time it issues a rule finalizing this proposal.

In addition, the Bureau is proposing, 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 § 1026.37(m)(1), this disclosure requirement applies only to transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively. Specifically, proposed § 1026.38(p)(1)(i) requires 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) requires 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 proposed § 1026.38(r). Proposed § 1026.38(p)(1) requires these disclosures to be provided under the subheading ''Appraisal.'' Proposed comment 38(p)(1)–1 provides guidance regarding the applicability of proposed § 1026.38(p)(1). The comment states 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.

The Bureau believes 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).

38(p)(2) Contract Details

TILA section 128(a)(12) requires the creditor to provide a statement that ''[t]he 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 proposes § 1026.18(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) requires 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 is 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 prepayment rebates and penalties. Proposed § 1026.38(p)(2) requires this information to be disclosed is under the subheading ''Contract Details.''

38(p)(3) Liability After Foreclosure

As discussed in the section-by-section analysis to 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 section 129C(g)(3), which applies to refinance transactions only, is implemented in proposed § 1026.37(m)(7).

Proposed § 1026.38(p)(3) implements the requirements of TILA section 129C(g)(2) for transactions subject to § 1026.19(f), 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 must disclose a brief statement that State law may protect the consumer from liability for the unpaid balance. The statement must also 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) requires the creditor to disclose that fact. The information required by proposed § 1026.38(p)(3) is provided under the subheading ''Liability after Foreclosure.'' Proposed comment 38(p)(3)–1 clarifies 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 clarifies 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.

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 proposes to modify the statutory requirement 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 more 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 could be confusing for consumers and costly and burdensome to implement. The Bureau recognizes that significant State law variations exist regarding anti-deficiency protection. For this reason, proposed § 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. The Bureau believes the proposed 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(p)(4) Refinance

Proposed § 1026.38(p)(4) implements 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 their loan. For a detailed discussion of the Bureau's proposed implementation of TILA section 128(b)(2)(C)(ii), see the section-by-section analysis to proposed § 1026.37(m)(5).

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 at 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) implements 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) requires 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 requires a statement advising the consumer to consult a tax professional for additional information. The Bureau believes that the proposed disclosure promotes the informed use of credit in all transactions subject to § 1026.19(f), and is therefore consistent with the purposes of TILA. Moreover, requiring the disclosure for all transactions subject to proposed § 1026.19(f), whether secured by the consumer's principal dwelling or other real property, facilitates 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 believes that the proposed disclosure ensures 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 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(q) Questions Notice

Proposed § 1026.38(q) requires the creditor or closing agent 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 Web site 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 is proposing 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 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, and will 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).

Requiring disclosure of this notice complements proposed § 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 three business days prior to consummation if the APR as initially disclosed becomes inaccurate, and 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. RESPA section 4 requires that the RESPA settlement statement be provided ''at or before closing,'' however, and the Bureau understands that it is typically given at closing. Proposed § 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. 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.

Under proposed § 1026.38(q), the required notice includes a statement directing the consumer to contact the creditor with any questions about the disclosures required under § 1026.19(f). If the alternative language proposed in § 1026.19(f)(1)(v) is adopted in a final rule, however, the closing agent may provide the disclosures required under § 1026.19(f) instead of the creditor. Notwithstanding this fact, the Bureau believes the notice required under proposed § 1026.38(q) should in all cases reference the creditor, rather than the closing agent, because the creditor is better positioned to answer the consumer's questions relating to the disclosures provided under § 1026.19(f). The creditor is familiar with the loan terms and is responsible for disclosing the aggregate amount of closing costs under TILA section 128(a)(17). Moreover, it is more likely that the creditor will have been in communication with the consumer previously. The Bureau seeks 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, or a statement directing the consumer to contact the closing agent, if the disclosures required under § 1026.19(f) are provided by the closing agent.

Moreover, the Bureau's Web site will 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. Directing consumers to this Web site therefore promotes consumer understanding of credit terms and closing costs and of benefits and risks associated with the transaction in light of the facts and circumstances.

The notice required under proposed § 1026.38(q) also includes a prominent question mark. This prominent question mark is an aspect of 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). Consumer testing by the Bureau indicated that use of the prominent question mark icon in the questions notice drew consumers' attention to the notice.

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 Nationwide Mortgage Licensing System and Registry. 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 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 is proposing 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 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 believes 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. 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 believes 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 is proposing § 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. Thus, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau 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. New TILA section 129B(b)(1)(B) will be implemented in a separate Bureau rulemaking concerning mortgage loan origination compensation. However, the Bureau is proposing 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 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. In the integrated TILA–RESPA final rule, the Bureau expects to harmonize this proposal with its rulemaking implementing TILA section 129B(b)(1)(B).

The Bureau also believes that the disclosure of contact information in a tabular format as required by proposed § 1026.38(r) complements proposed § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. As noted above, proposed § 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 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. Thus, the contact information table required under proposed § 1026.38(r) makes 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 in the table facilitates efficient communication between the consumer and the other parties.

As applicable, the table required by proposed § 1026.38(r) would include 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 provide additional guidance regarding these required disclosures. For instance, proposed comment 38(r)–3 clarifies 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 clarifies 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.

38(s) Signature Statement

For the reasons and based on the legal authority set forth in the section-by-section analysis to proposed § 1026.37(n), proposed § 1026.38(s) implements 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) mirror the requirements in proposed § 1026.37(n). Proposed comment 38(s)–1 cross-references the commentary to proposed § 1026.37(n) for guidance regarding optional signature requirements and signature lines for multiple consumers.

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.* The Bureau has considered the 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. As a result, the Bureau believes that the proposed disclosure is appropriate, but solicits comment on this issue.

38(t) Form of Disclosures

As discussed above, the Bureau is proposing 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 analysis of proposed § 1026.37(o), the Bureau, pursuant to its implementation authority under TILA section 105(a), proposes 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 believes 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 and avoid the uninformed use of credit.

38(t)(1) General Requirements

Similar to proposed § 1026.37(o)(1), proposed § 1026.38(t)(1) establishes 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 clarifies 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 also clarifies 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 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.

The Bureau recognizes 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 described above in the discussion of proposed § 1026.37(o), the Bureau believes that this approach is virtually never employed for mortgage credit, for which the new disclosures under proposed §§ 1026.19(f) and 1026.38, rather than § 1026.18 disclosures, are required. For the reasons stated in that discussion, the Bureau believes that requiring the § 1026.38 disclosures to be delivered as a separate document does not present any significant new obligation that mortgage creditors do not already effectively observe and maximizes the benefits of the forms. The Bureau seeks comment, however, on whether there currently are transactions subject to § 1026.19(f) that may be burdened by the adoption of this requirement.

Also, similar to proposed § 1026.37(o)(1)(ii), proposed § 1026.38(t)(1)(ii) provides 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 clarifies that the treatment of balloon payment loans with leasing characteristics.

38(t)(2) Estimated Disclosures

Similar to proposed § 1026.37(o)(2), proposed § 1026.38(t)(2) provides 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. 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 noted above in the section-by-section analysis of proposed § 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 do not include in any of the master headings, headings, subheadings, labels, and similar designations the word ''estimated.'' Instead, proposed § 1026.37(o)(2) effectively incorporates by reference the ''estimated'' designations reflected on form H–24 of appendix H to this part. Accordingly, proposed § 1026.38(t)(2) also incorporates by reference the ''estimated'' designations reflected on form H–25 of appendix H to this part. Proposed comment 38(t)(2)–1 provides guidance regarding the requirement to disclose certain amounts as estimated amounts based on the designations within form H–25.

38(t)(3) Form

Similar to proposed § 1026.37(o)(3), proposed § 1026.38(t)(3) also provides 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 this part. Certain closed-end consumer credit transactions are subject to the requirements of proposed § 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 proposed § 1026.19(f) 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'').

As with transactions subject to proposed § 1026.19(e), for such transactions that are subject to proposed § 1026.19(f), because they are subject to TILA and are secured by real property, but that are not subject to RESPA, the Bureau is not mandating 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) provides 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 explains 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).

As discussed in the analysis of proposed § 1026.37(o)(3), the Bureau is proposing 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 proposes 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. *Id.* 2601(b)(1). The Bureau believes, 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 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, participants better understood the costs disclosed in the Closing Disclosure after gaining experience using the matching format of the Loan Estimate. Further, 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 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, the Bureau 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. The Bureau uses this authority to require a standard form for federally related mortgage loans under proposed § 1026.38(t)(3)(i). As described above, for transactions subject to proposed § 1026.19(f), proposed § 1026.38(t)(3)(ii) uses the authority 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 proposed § 1026.37(o)(3).

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 seeks comment 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.

Similar to proposed § 1026.37(o)(3)(iii), proposed § 1026.38(t)(3)(iii) also provides that the disclosures may be provided in electronic form, subject to compliance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). This provision parallels existing § 1026.17(a)(1).

38(t)(4) Rounding

Similar to proposed § 1026.37(o)(4), proposed § 1026.38(t)(4) requires certain numerical amounts on the Closing Disclosure to be rounded. The Bureau proposes this requirement for the same reasons as the requirements of proposed § 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 analysis of proposed § 1026.37(o)(4). Proposed comment 38(t)(4)–1 clarifies 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 refers to commentary to proposed § 1026.37(o)(4) for guidance.

38(t)(5) Exceptions

The Bureau believes 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 proposed § 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 proposes § 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 analysis of proposed § 1026.37(o)(5).

The requirements of proposed § 1026.38(t)(5) mirror those of proposed § 1026.37(o)(5), with appropriate differences for the different format, timing, and use of the two disclosures. Like proposed § 1206.37(o), proposed § 1026.38(t)(5)(i) requires modification to indicate the frequency of payment or applicable unit-period for the transaction; proposed § 1026.38(t)(5)(ii) permits lender credits to be deleted from the Cash to Close disclosure required by proposed § 1026.38(d); proposed § 1026.38(t)(5)(iii) permits the addition of administrative information in certain space on the form; and proposed § 1026.38(t)(5)(ix) permits translation of the form into languages other than English.

In contrast to proposed § 1026.37(o), unlike proposed § 1026.37(o)(5)(iii), proposed § 1026.38(t)(5) does not permit the font size or type to be altered from, or a slogan or logo to be provided for or with, the creditor information required by proposed § 1026.38(a)(4)(iii).

While proposed § 1026.37(o)(5) does not permit the deletion of lines from the proposed form H–24 in appendix H to Regulation Z for the information required to be disclosed by proposed § 1026.37(f) and (g), proposed § 1026.38(t)(5)(iv) does permit the deletions of lines in certain circumstances from proposed form H–25 in appendix H to Regulation Z. While proposed § 1026.37(o) does not permit the use of additional pages for closing cost details on the Loan Estimate, except for the services for which a consumer can shop under proposed § 1026.37(f)(3), proposed § 1026.38(t)(5)(v) does permits the expansion of the information required by proposed § 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 proposed § 1026.38(f) and (g), respectively, are each disclosed on a single page.

In addition, the Bureau understands 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) permits 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) permits 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) permits the disclosures regarding the consumer's credit transaction required by proposed § 1026.38(l) through (s) to be deleted from the form provided to a seller. An illustration of such form is provided in proposed form H–25(I) in appendix H to Regulation Z. Further, considering that some credit transactions may not involve sellers, proposed § 1026.38(t)(5)(viii) also permits use of a modified version of the form for credit transactions that do not involve a seller, such as a refinance transaction, which is illustrated in proposed form H–25(J). Proposed § 1026.38(t)(5)(x) also permits the addition of a page for customary recitals and information used locally in real estate settlements.

Proposed comment 38(t)(5)–1 clarifies 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 proposed comments 37(o)(t)–2 through –5, proposed comments 38(t)(5)–2 through –5 provide guidance regarding manual completion of the form,

modifications to accommodate additional contact information, the addition of signature lines, and the formatting of additional pages permitted by § 1026.38(t)(5). In addition, because certain disclosures required by proposed § 1026.38 are 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 this part as disclosed on one page, proposed comment 38(t)(5)–6 permits modifications to the page number references illustrated on form H–25 accordingly.

Proposed comment 38(t)(5)(iv)–1 provides guidance regarding the deletion and addition of line numbers on form H–25 for the disclosures requirements of § 1026.38(f) through (h). Proposed comments 38(t)(5)(v)–1 and –2 provide guidance regarding the permission to disclose the information required by proposed § 1026.38(f) through (h) over two pages. Proposed comments 38(t)(5)(viii)–1 and –2 provide guidance regarding the effect of the modifications permitted by proposed § 1026.38(t)(5)(viii) on the Calculating Cash to Close table required by proposed § 1026.38(t)(i) and with respect to the disclosure required by proposed § 1026.38(a)(3)(vii)(B). Proposed comment 38(t)(5)(x)–1 provides guidance regarding the permission to add an additional page for customary recitals and information.

Section 1026.39 Mortgage Transfer Disclosures

Section 1414(d) of the Dodd-Frank Act amended TILA section 129C to add section 129C(h), which requires at the time a person becomes a creditor of an existing residential mortgage loan, disclosure of the following: (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 proposes to implement in proposed § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), as described above.

Section 1401 of the Dodd-Frank Act amended TILA section 103 to define ''residential mortgage loan'' as essentially closed-end credit transactions secured by a dwelling or residential real property with a dwelling. Specifically, the definition includes 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, other than 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).

On May 20, 2009, the Helping Families Save Their Homes Act of 2009 was signed into law.[188] Section 404(a) of the Helping Families Save Their Homes Act of 2009 amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The creditor that is the new owner or assignee of a mortgage loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan. This provision is contained in TILA section 131(g), 15 U.S.C. 1641(g), and applies to any consumer credit transaction secured by the principal dwelling of a consumer. The Board implemented TILA section 131(g) in Regulation Z § 1026.39.[189]

Scope of Coverage

The disclosures required by TILA sections 129C(h) and 131(g) must be provided in connection with the transfer or assignment of a mortgage loan generally. However, the disclosures apply to different types 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 secured by the principal dwelling of a consumer. But the requirement of TILA section 129C(h) applies to closed-end credit secured by a dwelling or residential real property with a dwelling, which is broader than a consumer's principal dwelling, but specifically excludes open-end credit. Further, the TILA section 131(g) disclosure is specifically required by statute to be provided no later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party. 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. In other words, TILA section 129C(h) requires the disclosure when the person acquires the loan.

The Bureau believes that combining the partial payment policy disclosure required after consummation with the mortgage loan transfer disclosure currently required by § 1026.39, and adjusting the scope of the mortgage loan transfer disclosure to include credit transactions secured by all dwellings, rather than principal dwellings only, would promote the informed use of credit by consumers and facilitate compliance by persons covered by these requirements. 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, adjustment of the scope of § 1206.39 to include closed-end credit transactions secured by a dwelling would eliminate much of the analysis that covered persons would have to undertake to determine whether and which disclosures would be triggered when a closed-end transaction secured by a dwelling is transferred.

The Bureau also proposes to adjust the scope of the current mortgage loan transfer disclosure 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 of this part), as well as closed-end transactions secured by a dwelling. This adjustment would expand the coverage of the mortgage loan transfer disclosure, and the post-consummation partial payment policy disclosure, to the same types of property covered by the pre-consummation partial payment policy disclosure, which includes closed-end transactions secured by real estate but not a dwelling. The Bureau believes that requiring the post-consummation partial payment policy disclosure for the same loans as the pre-consummation partial payment policy disclosure 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 believes 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 adjustment to the scope does not exclude reverse mortgage transactions subject to § 1026.33, as does

[188] Public Law 111–22, 123 Stat. 1632 (2009).

[189] 75 FR 58489 (Sept. 24, 2010).

§ 1026.19(f), as such transactions are not currently excluded from coverage under § 1026.39 generally. However, reverse mortgage transactions do not require consumers to make regular periodic payments to the creditor, and thus, the Bureau proposes to exclude reverse mortgage transactions subject to § 1026.33 from the requirement to disclose a partial payment policy. The Bureau believes this exclusion of reverse mortgage transactions from the partial payment disclosure is appropriate and facilitates compliance with the statute.

In addition, although the scope also does not contain the specific exclusion for credit transactions relating to timeshare plans as described in 11 U.S.C. 101(53D), as defined by section 1401 of the Dodd-Frank Act, that the definition of ''residential mortgage loan'' does under TILA section 103, such transactions would generally be covered by proposed § 1026.19(f) as transactions secured by real estate. The Bureau believes that a new creditor's partial payment policy would be just as useful to a consumer whose closed-end credit transaction is secured by a such a timeshare plan as to a consumer of a principal-dwelling secured transaction.

The Bureau proposes the aforementioned adjustments 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 believes 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, 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 proposes this modification of the disclosure requirements for residential mortgage loans on its authority under Dodd-Frank Act section 1405(b), as it believes the modification 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.

39(a) Scope

For the reasons discussed above, the Bureau proposes 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 proposes to retain the scope for open-end credit transactions to those secured by the consumer's principal dwelling.

The Bureau is not proposing to change the scope of the term ''covered person'' under § 1026.39(a)(1). When the Board promulgated § 1026.39, it applied the section to ''covered persons,'' rather than ''creditors'' as defined under TILA and Regulation Z.[190] The Board stated that Congress did not intend the word ''creditor'' under section 404(a) of the Helping Families Save Their Homes Act of 2009 to have the same meaning as ''creditor'' under TILA and Regulation Z.[191] 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). However, as described above, the requirement of section 404(a) of the Helping Families Save Their Homes Act of 2009 applies to a ''creditor that is the new owner or assignee of the debt.'' [192] 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.'' [193] Similar to section 404(a) of the Helping Families Save Their Homes Act of 2009, the post-consummation disclosure requirement of TILA section 129C(h) applies to persons who become creditors after the transaction is consummated. The requirement under TILA section 129C applies to ''a person becoming a creditor with respect to an existing residential mortgage loan.'' [194] The Bureau believes that, for the same reasons cited by the Board in implementing TILA section 131(g), 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.[195] For these reasons, the Bureau proposes to retain the term ''covered person'' under § 1026.39(a)(1) and its definition.

39(d) Content of Required Disclosure

As discussed above, the Bureau believes the adjustment to the scope of § 1026.39 may promote the informed use of credit and facilitate compliance with the statute. The Bureau proposes amendments to § 1026.39(d) to add the additional requirement of TILA section 129C(h) to the disclosure required by that section. Pursuant to its authority under TILA Section 105(a), the Bureau proposes to integrate the timing of this disclosure requirement with the disclosure required by TILA section 131(g). The Bureau believes that 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 consumer having to receive separate mailings at different times. 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.

The Bureau believes this integrated mortgage transfer disclosure will also facilitate compliance with the statute. Covered persons will 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. However, because the partial payment policy disclosure required by TILA section 129C(h) is not required for open-end credit transactions, and the pre-consummation partial payment policy disclosure as implemented by proposed § 1026.38(l)(5) for loans subject to proposed § 1026.19(f) is not required for closed-end credit reverse mortgage transactions subject to § 1026.33, and for the aforementioned reasons, the partial payment policy disclosure requirement under proposed § 1026.39(d) is not required for these types of transactions.

The proposed amendments also add comment 39(d)–2, which clarifies 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 clarifies that covered persons are permitted to use the format for the disclosure that is

[190] *Id.*

[191] *Id.* at 58490–1.

[192] Public Law 111–22, § 404(a); 15 U.S.C. 1641(g).

[193] 75 FR 58489, 58490–1.

[194] 15 U.S.C. 1639c(h).

[195] *See* 75 FR 58489, 58490–1.

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.

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. The Bureau proposes to exercise 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 that appendix D to assist in the integration of these disclosures. In addition to effectuating Dodd-Frank Act section 1032(f), the Bureau believes that these proposed 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.

Proposed revisions to part II of appendix D exclude loans that are subject to § 1026.19(e) and (f) from the guidance provided under paragraph A.1 of part II, but include those loans in the guidance provided under paragraph A.2 of part II. Proposed revised comment app. D–6 clarifies 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 clarifies that, where interest is payable on the amount actually advanced for the time it 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 clarifies 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 further clarify the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c).

The first illustration clarifies that, if a creditor uses appendix D and 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 §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a 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)'' does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor determines 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 is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a balloon product, pursuant to §§ 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 clarifies 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 appendix D, part II.C.2, the projected payments table must 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 determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

Appendix H—Closed-End Forms and Clauses

The Bureau proposes to add forms H–24, H–25, H–26, and H–27 to appendix H to Regulation Z. Forms H–24 and H–25 provide 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 provides 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 provides 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 proposes forms H–24 and H–25 pursuant to the authority and for the reasons described above with respect to §§ 1026.37(o) and 1026.38(t). Specifically, the Bureau proposes forms H–24 and H–25 as standard forms that are required for transactions that are subject to proposed § 1026.19(e) and (f) and are federally related mortgage loans, as defined in Regulation X. For transactions that are subject to proposed § 1026.19(e) and (f) but are not federally related mortgage loans, the forms in H–24 and H–25 are models for compliance with the applicable requirements of §§ 1026.19, 1026.37, and 1026.38.[196]

Transactions subject to § 1026.19(e) are subject to additional disclosure requirements under proposed § 1026.19(e)(1)(vi), (2)(ii), and (3)(ii)(C). Form H–26 provides a model for compliance with the statement required by proposed § 1026.19(e)(2)(ii) if 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 § 1026.19(e)(2)(ii), this statement must 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.

Form H–27(A) provides a model 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

[196] For these transactions, the Bureau also proposes these forms pursuant to its authority to publish model forms under TILA section 105(b) and (c).

the consumer may select a settlement service provider that is not on the list. Forms H–27(B) and (C) are samples for this form. The Bureau proposes forms H–26 and H–27 pursuant to its authority to publish model forms under TILA section 105(b) and (c). The Bureau also proposes 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).

As noted above, 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 has proposed the examples described above, which of course, have added significant length to the proposed rule. The Bureau seeks 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 has also received feedback from industry stakeholders during its outreach 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 has proposed amendments to appendix D to Regulation Z and its commentary, as described above, that relate to such construction financing and provide guidance regarding its disclosure on the Loan Estimate. The Bureau believes the proposed Forms H–24(C) and (E) provide the necessary illustration for such financing, because these samples contain 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 notes that one difference for the disclosure of such financing is that the purpose of the transaction disclosed under proposed §§ 1026.37(a)(9) and 1026.38(a)(5)(ii) would be ''Construction.'' The Bureau seeks 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.

VII. Section 1022(b)(2) Analysis

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[197] 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, and the Department of Veterans Affairs regarding the potential impacts of the proposed rule on those entities' loan programs.

The Bureau is proposing to implement section 1032(f) of the Dodd-Frank Act by proposing rules and forms combining the pre-consummation TILA and RESPA disclosures for loans subject to either law or to both laws by July 21, 2012. Sections 1098 and 1100A of the Dodd-Frank Act, which revise RESPA and TILA, respectively, to mandate the integrated disclosures, state that the purposes of the disclosures are to facilitate compliance with 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.'' The Bureau is also proposing to implement several new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act. In addition, the Bureau is proposing to revise 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 and terms, consistent with the purposes of TILA and RESPA.

TILA and RESPA currently require creditors and settlement agents to give consumers who take out mortgage loans 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. 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 Act specifically directs the Bureau to combine the TILA and RESPA mortgage disclosures.

A. Provisions To Be Analyzed

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The analysis below considers the benefits, costs, and impacts of the following major proposed provisions and the additional proposed modifications:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively),
2. The definition of application,
3. The disclaimer on pre-application written estimates,
4. Permissible changes to settlement costs and re-disclosure of initial disclosures,
5. Provision of the Closing Disclosure,
6. Recordkeeping,
7. The definition of the finance charge, and
8. Implementation of new disclosures mandated by the Dodd-Frank Act.

With respect to each provision, the analysis considers the benefits and costs to consumers and covered persons. The analysis also addresses certain alternative provisions that were considered by the Bureau in the development of the rule. The Bureau requests comments and data on the potential benefits, costs, and impacts of the proposal.

B. Baseline for Analysis

The analysis examines the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-statutory baseline. To the extent there are benefits, costs, or other relevant impacts emanating from the relevant provisions of the Dodd-Frank Act, those costs are combined with the benefits, costs, and impact 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.

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

C. Coverage of the Proposal

The proposed rule requires provision of the integrated disclosures for closed-end consumer credit transactions secured by real property, other than a reverse mortgage subject to § 1026.33. As discussed in part VI above, section-by-section analysis for proposed § 1026.19, 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. However, TILA and RESPA differ in the types of transactions to which their respective disclosure requirements apply. The proposed scope of the integrated disclosure provisions reconciles these differences, recognizing that certain transaction types may be inappropriate for the integrated disclosure.

Notably, the integrated disclosure provisions of the proposed 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. The integrated disclosure provisions also do not apply to dwellings that are not secured by real property, which are subject to TILA but not RESPA, nor to creditors that originate fewer than five loans in a year, who 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 more than 25 acres, 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. The proposed revisions to the definition of finance charge, discussed below and in part VI, section-by-section analysis for § 1026.4, apply to all closed-end credit transactions secured by real property or a dwelling.

D. Potential Benefits and Costs to Consumers and Covered Persons

1. Integrated Initial and Closing Disclosures

The proposed 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 prescribed RESPA GFE and settlement statement forms). Accordingly, the Bureau is proposing to require the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA, other than reverse mortgages. For transactions that are subject only to TILA, however, the forms would be model disclosures, consistent with the provisions of that statute. The proposed 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.

In considering the benefits and costs of the Loan Estimate and Closing Disclosure, the Bureau notes that the costs associated with the proposal would likely be one-time costs associated with adjusting to the new requirements while the benefits would persist over time. Some of the benefits—the benefits to consumers of reduced mortgage costs—may actually grow over time as more consumers pay off existing mortgages and take out new mortgages. The Bureau believes that because the proposed disclosures would likely lead to consumers making more informed choices, some of them would obtain mortgages that were lower cost than, or in some other way preferable to, the mortgages they would obtain otherwise. In particular, if consumers do obtain mortgages at a lower cost, these benefits accrue over time; as more borrowers take out loans with the new disclosures, the share of all mortgage borrowers receiving these benefits would grow.

a. Benefits to Consumers

i. *The Loan Estimate.* The integration of the early TILA disclosure and the RESPA GFE into the Loan Estimate would have several benefits to consumers. The Bureau believes that the Loan Estimate would facilitate consumer understanding of the loan terms and closing costs of possible loans. The Loan Estimate would also make it easier for consumers to compare different loans, either different products from a single creditor or loans from different creditors. In addition, the harmonization of the Loan Estimate and Closing Disclosure forms would make it easier for consumers to compare the estimated information they initially receive from creditors with the actual costs of the loan. The benefits of this third effect are discussed below, in the section on the benefits of the Closing Disclosure.

The Loan Estimate would make it easier for consumers to understand their loan in several ways. First, the Loan Estimate would make it easier for consumers to understand the loan terms and closing costs of potential loans. The Loan Estimate emphasizes information that is important to consumer understanding of the mortgage transaction, and deemphasizes information that is either confusing or unhelpful to consumers, such as the APR, which current TILA disclosures focus on as a measure of the cost of credit. As discussed in part VI above, section-by-section analysis for proposed § 1026.37(l), research conducted by the Board and HUD, as well as consumer testing conducted by the Board and 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. 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. See Macro 2009 Closed-End Report at iv–v. Accordingly, the Bureau developed the proposed 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 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, the Bureau believes the Loan Estimate is easier for consumers to use and understand.

The Loan Estimate may also 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 the 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 would help reduce the likelihood that consumers will experience payment

shock due to future payment changes. In addition, unlike current Federal forms, the Loan Estimate prominently discloses total monthly payment amounts, including estimated amounts for taxes, insurance, and assessments, whether or not an escrow account would be established for the payment of such amounts. This disclosure would make it 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 would also reduce the sheer volume of paper that consumers receive, mitigating ''information overload'' and making it easier for consumers to identify important information. With the current Federal disclosures, consumers 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. The Bureau therefore believes that the Loan Estimate would be substantially more understandable for consumers than the current TILA disclosure and RESPA GFE and would enable consumers to make more informed choices when they are considering a mortgage.

Better understanding of closing costs and loan terms would benefit consumers in several ways. It would 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 consumers, 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.

For consumers that 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 consumers, 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 consumers entered into loans with such features when they were not suited to them because they were unaware of such features or the risk they posed.

The forms may also facilitate shopping amongst loan offers and creditors, affecting both the evaluation of different offers and the number of offers consumers obtain. Existing research suggests that consumers arguably do not shop extensively when selecting a mortgage. Surveys of mortgage borrowers suggest that roughly 20–30 percent of borrowers contact one creditor and a similar fraction consider only two creditors.[198]

Further, 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.[199] Making the terms of a given loan easier to understand would 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 consumer testing of the Loan Estimate to ensure that forms enable 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 preferences (*e.g.,* a fixed rate or lower closing costs). In addition, Regulation Z currently uses model forms and language, not standard forms and language, so it does not ensure that consumers are presented information about loan terms and costs in the same way across multiple loans and multiple creditors. The proposed regulation would require 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, making comparisons easier.

Making it easier for consumers to compare products may have two effects. It may make shopping more effective, leading consumers to make better choices for themselves amongst a given set of loans. It may also lead to more shopping, because the task of comparing loans is simpler. The estimated benefits of shopping for mortgages and for settlement services are substantial. Hall and Woodward estimate that the borrowers who obtain loans through mortgage brokers could save roughly $1,000 on the transaction through additional search.[200]

In addition to providing consumers with clear information about important loan 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 than settlement service providers selected by the creditor. In a recently released study of title services and title insurance based on RESPA settlement statements for FHA loans, HUD and the Urban Institute estimate that borrowers in some jurisdictions could save several hundred dollars if they searched for title services and title insurance.[201]

ii. *The Closing Disclosure.* The Bureau believes that the integration of the final TILA disclosure and the RESPA settlement statement would benefit consumers by allowing them to better understand the actual terms 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 testing.

The Bureau believes that the Closing Disclosure is more understandable for consumers than the current TILA disclosure and RESPA settlement statement and, as described below, the proposal would include a requirement that the Closing Disclosure be provided to consumers three business days prior to closing, giving consumers time to review the Closing Disclosure.

[198] Jinkook Lee and Jeanne M. Hogarth, Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else?, Fin. Services Rev. 9, 277–293 (2000), available at *http://www2.stetson.edu/fsr/abstracts/vol_9_num3_p277.pdf; see also* Lacko and Pappalardo, *Improving Consumer Mortgage Disclosure,* available at *http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf.*

[199] *See* Bucks and Pence, *Do Homeowners Know Their House Values and Mortgage Terms,* available at *http://www.federalreserve.gov/Pubs/feds/2006/200603/200603pap.pdf; see also* Lacko and Pappalardo.

[200] Hall and Woodward, *Diagnosing Consumer Confusion and Sub-Optimal Shopping Effort: Theory and Mortgage-Market Evidence* (2012), available at *http://www.stanford.edu/~rehall/DiagnosingConsumerConfusionJune2012.* In the data used in the paper, yield spread premiums are common. As a result, the results may overstate some of the current savings from changes in shopping behavior. However, these results only include settlement charges retained by the broker and therefore any savings on other charges are additive to these.

[201] U.S. Department of Housing and Urban Development and The Urban Institute, *What Explains Variation in Title Charges? A Study of Five Large Markets* (2012) (HUD Title Charge Study), available at *http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html.*

The Bureau also believes the Closing Disclosure would 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 page of the Loan Estimate and Closing Disclosure also use the same order and groupings of costs, making it easier for consumers to identify changes. At the Bureau's consumer testing, consumers were able to use the second pages of the Loan Estimate and Closing Disclosure together to identify changes in individual costs, often placing the forms side by side, which was enabled by the matching order and groupings. In addition, page three of the Closing Disclosure contains a table that identifies categories of costs that changed from the time the Loan Estimate was issued to the time of issuance of the Closing Disclosure. The Bureau believes these features would improve consumers' ability to understand their actual loan terms and costs, and compare early and final disclosures and identify changes in loan terms, which may better enable consumers to recognize and question changes in settlement costs or loan terms from the Loan Estimate. This may encourage all 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.

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. There is some evidence showing that slight increases in shopping—just contacting one more creditor or loan originator—can lead to substantial savings for a consumer. *See* Hall and Woodward. This evidence is based on market conditions with current consumer shopping behavior, however, so it is difficult to project to the effects of shopping if many consumers shopped more.

Similarly, quantifying the magnitude of the benefits of the integrated Closing Disclosure would also be very challenging. 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. As described below, however, the Bureau may obtain a substantial sample of these forms from several lenders prior to finalizing the proposal. This would provide the Bureau with better information about this phenomenon. Other important factors affecting the consumer benefits of improved final disclosures include how much the Closing Disclosure would affect whether consumers recognize those changes or how they react to them and the effects on creditors' and settlement service providers' behavior.

Despite the challenges to quantifying the benefits of the Loan Estimate or Closing Disclosure, simple hypothetical calculations demonstrate that, 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. For example, if the new disclosures only affect ten percent of consumers, and only lower their interest rates by .125% (⅛ of a percentage point, the smallest typical unit of price difference in the mortgage market), this would lead to an annual savings of $1,250,000,000 for mortgage borrowers if all mortgages were originated with the proposed disclosures and total outstanding mortgage balances were to remain at their current level of roughly $10 trillion. If consumers were to benefit from a reduction in costs like this, some of the savings would come from reduced profits to creditors and brokers, as creditors and brokers receive lower prices from better-informed consumers, while other savings would come from a shift of business from less efficient to more efficient creditors and brokers. The reallocation to more efficient creditors and brokers that can originate loans at lower cost represents a savings to society in terms of the total resources used to originate loans.

A similar hypothetical can illustrate the potential effects of the improved ability of consumers to better understand closing costs. Bankrate.com collects information on average closing costs, as estimated on creditor RESPA GFEs, by State, for a $200,000 mortgage. It shows that average closing costs on such a mortgage, including lender fees, vary from roughly $2,300 to roughly $5,000. Taking average closing costs of $3,000, for example, if a consumer was able to use the Loan Estimate to shop more effectively for loans that came with lower closing costs or to shop for the various settlement services themselves and thereby obtain a loan with closing costs five percent lower, this would translate into savings of $150. This assumption seems reasonable, given the HUD and Urban Institute estimates that borrowers in some jurisdictions could save several hundred dollars by shopping for these services. See HUD Title Charge Study. The most recent year for which detailed mortgage origination information is available is 2010. The Bureau estimates that there were a total of about 8,000,000 mortgages originated that year. If ten percent of consumers saved $150 each, it would translate into roughly $120,000,000 per year. As with any savings on loan costs, these savings would come from a mix of reduced profits to settlement service providers and from shifting demand from less efficient to more efficient providers.

c. Costs to Consumers

The Bureau does not believe that adoption of the integrated Loan Estimate or Closing Disclosure would impose any direct costs on consumers. Consumers may bear some costs of the disclosures if lenders or loan originators pass through some or all of the costs that would be imposed on them by the proposal. However, the Bureau estimates that any increased cost per origination would be small and that, after one-time costs are absorbed, the proposal would likely reduce the cost per origination. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term. Over the longer term, the rule could increase credit access if the expected cost savings materialize and competition forces lenders to pass the savings to consumers.

Requiring the use of standard Loan Estimate and Closing Disclosure forms has the potential to impose costs on some consumers if it supplants forms

that are currently in use by creditors or mortgage brokers that are more effective at conveying information to consumers than the proposed forms, or if the requirement to use the forms prevents the development of more effective forms. The Bureau does not believe that there is a substantial risk of this occurring. Current Regulation X prescribes a standard form for the RESPA GFE and settlement statement. Although Regulation Z provides model forms and language rather than standard forms, the Bureau understands that many creditors do not provide disclosures that differ significantly from the model forms and language in Regulation Z due to the complexity of the Regulation Z disclosure requirements and the safe harbor provision in TILA section 105(b). Therefore, creditors are limited in their ability to develop forms that are substantially better at conveying information to consumers. The Bureau is unaware of any efforts by creditors of the scale undertaken by the Bureau to develop and test disclosures. And creditors that do believe that they can communicate loan terms or other important information more effectively than the required forms would not be prevented from doing so, so long as they also provide the required forms and communicate that information separately from the required forms.

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 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 would replace a three-page RESPA GFE, a two-page early TILA disclosure, a one-page appraisal notification provided under ECOA section 701(e), and a one-page servicing disclosure provided under RESPA section 6, as well as incorporating other new disclosure requirements in the Dodd-Frank Act that might otherwise be provided as separate documents.

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, the Bureau is alternatively proposing and soliciting comment on removing from the integrated forms certain disclosures, such as the total interest percentage and cost of funds, which may be difficult to explain to consumers. Information submitted by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. Based on industry estimates, the typical hourly wage of a settlement agent is $31 per hour; therefore, this translates into a dollar savings from the simplified closing forms of $16.50 per closing. Some portion of these savings would likely be passed on to the 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 covered persons. Other examples of overlapping but potentially different numerical disclosures required under Regulations Z and X include information about balloon payments and prepayment penalties.

e. Costs to Covered Persons

As just described, the Bureau believes that the ongoing costs of compliance with the proposed disclosure requirements would likely be equal to or less than current ongoing compliance costs. The integrated Loan Estimate and the Closing Disclosure, however, would 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 discusses them together here. Under the proposal, responsibility for delivering the Loan Estimate would lie 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, as is currently the case with the RESPA GFE. The Bureau believes the costs would be similar for Loan Estimates delivered by brokers, and the estimates presented here are based on the assumption that the creditor delivers the Loan Estimate. The Bureau is proposing two alternatives for the provision of the Closing Disclosure. Under the first alternative, the creditor would be solely responsible for providing the disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would be jointly responsible. For the purposes of this analysis, the Bureau is assuming that the creditor will bear the costs of revising software and compliance systems. If, instead, settlement agents bore those costs, the costs would likely be similar, although borne by different parties.[202] The Bureau requests comment on this approach to estimating costs, including whether mortgage brokers and settlement agents would incur costs that are substantially different from those incurred by creditors if they were responsible for providing the disclosures.

Creditors would need to adapt their software and compliance systems to produce the new forms. In addition to changing the format of the required forms, the new proposed forms would include numerous new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information would 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 this additional information.

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. Based on industry feedback, the Bureau believes that roughly the top 20 mortgage originators maintain their own systems, while 95 percent of smaller creditors (those outside the top 50) rely on vendors.

Mid-size creditors (those roughly ranked between 20 and 50 in origination volume) are served by a range of vendors, and in some cases have

[202] As described below, two major vendors currently provide software services to the vast majority of small mortgage originators to produce the RESPA GFE and initial TILA disclosures. RESPA settlement statements are currently issued by settlement agents using software provided by a different, but similarly small, set of vendors; however, the Bureau understands that the originators' systems are capable of producing the RESPA settlement statements. As a result, the Bureau believes that it is reasonable to measure costs assuming that the originators' vendors will provide both the Loan Estimate and the Closing Disclosure to their clients under existing contracts. Were the current software providers for settlement agents to have to update their systems (under the second alternative or under other contractual arrangements), those vendors would have to incur the stated costs.

customized systems provided by these vendors. For the purposes of this analysis, the Bureau treats all creditors outside the top 20 the same.

The use of vendors by smaller 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. There are two primary vendors of this software to mortgage creditors outside the top 50. Based on discussions with vendors that provide software and compliance systems to mortgage lenders, the Bureau estimates that each of these vendors would spend roughly $500,000 to $2,000,000 to determine what changes need to be made to come into compliance and to update the software that they provide to creditors. Based on discussions with a leading origination technology provider, the Bureau believes that these updates, however, would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors.[203] As many as 95 percent of creditors outside the top 20, therefore, would not pay directly for software updates to comply with the new rules.

Based on estimates from small entities that participated in the Small Business Review Panel process, the Bureau estimates that the small fraction of smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to update their systems to comply with the proposal. Firms are expected to amortize this cost over a period of years. In this analysis, all costs are amortized over five years, using a simple straight-line amortization. Thus, about five percent of smaller creditors are expected to incur a cost of $20,000 per year. The Bureau estimates that there were a total of 14,374 banks, savings institutions, credit unions, and mortgage companies that originated mortgages in 2010,[204] the most recent year for which complete data are available, for a total of 14,354 outside the top 20.[205] The total one-time cost for the roughly five percent of smaller creditors that maintain their own compliance software and systems is therefore $100,000 * 14,354 * 5% = $71,800,000 (rounded to the nearest $100,000). Amortized over five years, the estimated total annual cost for this small fraction of small creditors to update compliance systems is about $14,360,000 for all small creditors combined.

The largest 20 mortgage creditors would need to revise their compliance software and systems. Based on information from conversations with large creditors and with software vendors, the costs to these creditors of updating compliance software and systems would vary considerably with the size and complexity of the institution. The Bureau estimates that on average the cost per creditor for this category of creditor would be $1,000,000, for a total of $20,000,000. Amortized over five years, the estimated annual cost for large creditors to update compliance systems is $4,000,000 for the largest 20 mortgage creditors combined.

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 two hours of training, and 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. The Bureau estimates that there are approximately 83,000 loan officers and other originators that would need training. Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation is $46 per hour for a loan officer and $39 per hour for a trainer, for a total training cost of (83,000 * 2 * $46) + (8,300 * 2 * $39) = $8,300,000 (rounded to the nearest $100,000). Amortized over five years, this is an annual cost of $1,660,000 for all mortgage creditors combined.

Taken together, the Bureau estimates that the total one-time costs of complying with the proposed Loan Estimate and Closing Disclosure would be roughly $100,100,000. Amortized over five years, this is an annual cost of $20,020,000 for all mortgage creditors combined. For additional perspective, there were approximately 8,000,000 mortgage originations in 2010. The estimated one-time cost, annualized using a five-year amortization, is therefore less than three dollars per origination. Note that these costs would not recur, and the Bureau expects that ongoing costs would be equal to or less than current compliance costs.

The proposed rule also requires itemization of certain settlement charges that are not permitted to be itemized on the current RESPA GFE and settlement statement forms, which may lead to increased costs for covered persons. In its 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 at 68276. However, the Bureau understands that creditors and settlement agents often provide this itemization on separate disclosures currently to comply with State law or investor requirements, which mitigates any increased costs associated with itemization.

2. Definition of Loan Application

The proposed rule revises the regulatory definition of loan application to encourage earlier provision of the Loan Estimate to consumers.

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 part VI above, section-by-section analysis for proposed § 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) monthly income; (3) social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until relatively late in the loan process by delaying collection of information deemed ''necessary.'' The Bureau understands that some creditors currently provide non-binding written estimates of loan terms or settlement charges prior to issuing the early TILA disclosure or RESPA GFE. The current rules encourage creditors and mortgage brokers to provide the good faith estimates early in the loan process by prohibiting creditors from collecting any fees from a consumer (other than a credit report fee) until the estimates are provided. To further encourage early provision of estimates, the proposed rule removes the seventh item (''any other information deemed necessary by the lender'') from the definition of ''application.''

a. Benefits to Consumers

The Bureau believes that the proposed rule may benefit consumers by ensuring

[203] Note that the vendors themselves are not covered persons.

[204] As discussed above, this analysis assumes that the creditor, rather than a mortgage broker, delivers the Loan Estimate and that the creditor also delivers the Closing Disclosure, rather than sharing responsibility for delivery with a settlement agent. Accordingly, the Bureau excludes mortgage brokers and settlement agents from this calculation.

[205] 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.

that consumers receive Loan Estimates early enough in the lending process to use them in shopping for their loan. Removing the seventh item may allow consumers to receive Loan Estimates that are subject to the limitations on increases discussed above with respect to proposed § 1026.19(e)(3) earlier in the lending process, whereas today 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. As described above, the Bureau cannot estimate the magnitude of the benefits of improved shopping, but believes that they could be very large. 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, both because it was developed through an extensive testing and design process and because certain costs disclosed in the Loan Estimate are subject to limitations on increases, described below. The Bureau believes that lenders will be able to provide reliable estimates based on the six items that together would constitute an application under the proposal and that, by receiving more reliable cost estimates earlier in the mortgage lending process, consumers would be less frequently surprised by increases in costs near the time of closing. However, the Bureau seeks input and information on whether the proposed change to the definition of application would result in less accurate estimates, or in more frequent re-disclosures that could cause consumer confusion.

b. Costs to Consumers

The Bureau does not believe that eliminating the seventh item in the definition of application would lead to costs to consumers beyond any costs that are 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 consumer 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, 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.'' As discussed in section F, below, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue.

In developing the proposed 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. Disclaimer on Pre-Application Estimates

The Bureau is proposing to require that any pre-application, consumer-specific written estimate of loan terms or settlement charges contain a prominent disclaimer indicating that the document is not the Loan Estimate required by TILA and RESPA. This requirement would not apply to general advertisements.

a. Benefits to Consumers

The Bureau believes that the disclaimer may benefit consumers by clearly distinguishing disclosures that are subject to TILA and RESPA protections from those that are not.

b. Costs to Consumers

This new disclosure requirement could impose costs on consumers, in the form of reduced information about mortgage loan options, if it makes creditors or mortgage brokers less willing to provide written pre-application estimates of loan terms. The Bureau believes, however, that any such effect on creditors or mortgage brokers would be small or non-existent, especially when they are acting in good faith.

c. Costs to Covered Persons

To the extent covered persons currently provide such pre-application written estimates to consumers they would bear the costs of adding a disclaimer to those communications. However, the Bureau expects such costs to be de minimis since the Bureau is proposing a brief, standard statement for use by creditors, which should not require significant redesign of existing estimate materials or require additional pages.

4. Changes in Settlement Costs/Redisclosures

The proposed 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 part VI, section-by-section analysis for proposed § 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 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 ten percent unless an exception applies (''ten percent tolerance''); and other charges that are not subject to any limitation on increases (''no tolerance''). The rule permits certain limited exceptions in which higher charges are permitted, such as when the consumer 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 proposed 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 proposed 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 would be considered 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).

In developing the proposed rule, the Bureau considered 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 is 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 rule can likely be improved by requiring creditors to provide consumers with more accurate estimates of settlement charges and reducing compliance burden for industry.

a. Benefits to Consumers

The Bureau believes that consumers may benefit when fewer fees are permitted to change from the Loan Estimate. Consumers that rely on the Loan Estimate to shop for a loan would 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 fee estimates may also reduce ''gaming'' by unscrupulous creditors that provide low-ball initial estimates and then impose new or different charges near the time of consummation.

The Bureau cannot quantify the magnitude of these benefits. 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. As noted above, the Bureau may obtain data on a sample of TILA disclosures and RESPA GFEs from several lenders, which would provide additional information about this issue.

For a sense of the scale of the potential impact, it is worth considering an extreme hypothetical example where all of the settlement services move from the ten percent tolerance category to the zero tolerance category. This is unlikely to happen in practice, but illustrates the largest possible effect of the regulatory change. For a loan with a total of $3,000 in settlement costs, the maximum effect of the proposal would be that the creditor could not pass on $300 in cost increases that occurred without an exception allowing the increase to be passed on to the consumer.

Expanding the set of costs covered by the zero tolerance 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, creditors are required to absorb more increases in costs (when no exception applies), and may seek to minimize the chance that these increases would 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 settlement service providers that give 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 could 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 consumers rely on less accurate information. The Bureau believes, however, that these effects are likely to be mitigated by competitive pressures that encourage brokers and creditors not to inflate cost estimates.

c. Benefits to Covered Persons

Covered persons may benefit from the proposed rule because it reduces compliance burden by resolving current regulatory ambiguities. For example, the proposed rule makes clear that creditors need not reissue Loan Estimates unless and until the costs that are subject to the ten percent tolerance standard increase based on valid changes in circumstance by more than ten percent in total. The proposed rule also revises the rule and provides more guidance to facilitate use of average cost pricing and reconciles certain inconsistencies between RESPA and TILA terminology. The proposed 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 proposed rule reduces unnecessary redisclosure of the RESPA content currently provided on the GFE, the rule would decrease costs to creditors, although the extent to which the proposed 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 if the rules were clarified. As discussed in section F, below, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue. 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 restricting certain changes in fees reduces bait-and-switch tactics by some creditors, this provision may also 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 a rule that applied the zero tolerance category to a larger range of charges. Since the proposed rule would expand the circumstances in which creditors could not pass increased costs to consumers when the initial estimate is lower than the actual costs but there is not a legitimate change in circumstances or other exception, creditors may be required to absorb more costs. 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 discussion of average settlement costs provided in the ''Consumer Benefits'' section applies here, as well,

suggesting that these costs to creditors would be quite modest.

The Bureau also understands that the proposed 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. Some have argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs. The Bureau is unaware of any evidence that the ultimate increase in costs is likely to occur. Alternatively, the proposed rule may encourage creditors to allow consumers to choose settlement service providers that are not on a list provided to the consumer (although in this case the creditor would be required to provide consumers with a list of settlement service providers that the consumers could use, if they so choose), 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.

5. Provision of Closing Disclosure

The proposed rule requires delivery of the integrated Closing Disclosure three business days before consummation in all cases. However, the Bureau is proposing two alternative approaches for assigning responsibility for providing the integrated Closing Disclosure to the consumer. Alternative 1 places sole responsibility for provision of the Closing Disclosure on the creditor, while Alternative 2 makes the creditor and settlement agent jointly responsible for providing the Closing Disclosure.

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 part VI, section-by-section analysis for proposed § 1026.19(f), 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 is provided to the consumer at or before settlement. 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 proposed rule would require delivery of the integrated Closing Disclosure three business days before closing in all circumstances. However, to prevent unnecessary closing delays, the proposed rule would permit limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. In addition, reissuance of the Closing Disclosure and an additional three-business day waiting period would not be required if, during the three business days after issuance of the Closing Disclosure, the amount needed to close shown on the Closing Disclosure increases by $100 or less.

i. *Benefits to Consumers.* Consumers may benefit from the proposed rule because it would ensure that consumers receive the disclosures far enough in advance of consummation 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 how and whether those terms have changed since the consumer received the Loan Estimate. Improved ability to compare early and final disclosures and identify changes in loan terms may better enable consumers to recognize and challenge increased settlement costs or loan terms that are different from the initial disclosure. This 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 initial Loan Estimates that have better loan terms or lower settlement costs than the final transaction. Some of these changes are not permissible under the current or revised regulation, but making it easier for consumers to identify these changes may provide an additional incentive for creditors to avoid such changes.

The Bureau cannot quantify the magnitude of the benefits of the three-day period for consumers to review the integrated Closing Disclosure. 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. The Bureau also does not know how much the three-day period would improve consumers' ability to recognize those changes or how consumers would react to changes, or the effects on creditors' behavior.

ii. *Costs to Consumers.* The proposal to require provision of the Closing Disclosure three business days prior to consummation in all circumstances may result in closing delays, which could come at a cost to consumers. 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 would have incentives to complete closings as scheduled, and therefore the Bureau believes that they would adjust their business practices such that the Closing Disclosure could be provided in a timely manner and closing problems would be infrequent.

iii. *Costs to Covered Persons.* If the requirement does lead to delayed or canceled closings, this would 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. The proposed rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

iv. *Alternatives Considered.* In developing the proposed rule, the Bureau considered requiring provision of the Closing Disclosure three business days before closing only when the APR in the Loan Estimate increases beyond a tolerance or certain risky features are added to the loan. In all other circumstances, the Closing Disclosure would have been provided at or before closing. However, the Bureau is concerned that this approach would allow significant increases in the cash needed to close the transaction without sufficient notice to consumers. Further, the Bureau has received feedback indicating that the APR estimates included in the early TILA disclosures typically change by more than ⅛ of 1 percent, such that most creditors provide corrected disclosures 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 closing in all cases is small given current creditor practices. In addition, the Bureau considered expanding current rules allowing consumers to waive the three-business day waiting period in cases of bona fide personal financial emergency. However, the Bureau is concerned that such an expansion would be subject to abuse.

b. 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 TILA disclosures 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 Bureau is proposing two alternative approaches for assigning responsibility for provision of the integrated Closing Disclosure to consumers. Under Alternative 1, the creditor would be solely responsible for delivering the Closing Disclosure to the consumer. Under Alternative 2, the creditor and settlement agent would be jointly responsible for providing the consumer with an integrated Closing Disclosure three business days before closing.

i. *Benefits and Costs to Consumers.* The Bureau believes that consumer benefits and costs would not differ between the two proposals, so long as disclosures are accurate and provided in a timely manner.

ii. *Benefits to Covered Persons.* Because the difference between Alternatives 1 and 2 is about which party would be responsible for providing a disclosure, the relative benefits of each proposal to different covered persons are likely to consist of avoided costs. The most useful way to consider these alternatives, therefore, is to consider their respective costs.

iii. *Costs to Covered Persons—Alternative 1.* Alternative 1 would likely place increased costs on creditors. As discussed above, RESPA and current Regulation X require that the person conducting the settlement provide the RESPA-required disclosures to consumers at or before consummation. Since, under Alternative 1, the creditor would be responsible for provision of both the TILA and RESPA content to the consumer, the creditor would incur additional logistical burden and legal risk. Creditors and settlement agents may incur one-time legal fees under Alternative 1, since those entities may need to contractually stipulate their respective duties or amend existing contractual arrangements in light of the rule. Creditors may also need to hire additional staff to handle the increased workload associated with collecting the settlement costs and coordinating with the settlement agents and third party service providers and preparing the disclosures. However, since the current regulatory scheme of split responsibility, as well as the different roles of creditors and settlement agents in the transaction, already requires a great deal of coordination, it is not clear that giving the creditor sole responsibility for providing the disclosures would impose much additional burden. As a general matter, shifting responsibility for delivery of final RESPA disclosures from settlement agents to creditors may change the role of settlement agents, though the exact impact of such a rule is unclear. Settlement agents play a unique role in working through local real estate transaction requirements and practices, which creditors may be unlikely to take on.

iv. *Costs to Covered Persons—Alternative 2.* The costs to creditors and to settlement agents under the proposed alternative that gives joint responsibility for provision of the Closing Disclosure to creditors and settlement agents would depend on how creditors and settlement agents go about fulfilling the joint requirement. Joint provision would likely require coordination on the part of creditors and settlement agents similar to what is done today. One additional cost, however, may entail re-working that coordination to adjust to the new forms and timing requirement (discussed above).

v. *Alternative Considered.* In developing the proposed rule, 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 concerned that settlement agents do not have access to much of the information regarding loan terms that must be included in the Closing Disclosure. 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. However, the Bureau is concerned that such an approach would be confusing for consumers, would be impracticable and result in additional regulatory burden because of the amount of overlap between TILA and RESPA disclosures, and is inconsistent with the Dodd-Frank Act requirement to integrate the disclosures.

6. Recordkeeping of Machine Readable Data

The proposed rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The proposed retention period is three years for the Loan Estimates and five years for the Closing Disclosures. See proposed § 1026.25.

a. Benefits to Consumers

The proposed rule may benefit consumers because comprehensive data on the extent to which settlement costs and loan terms change between the initial and final disclosures may improve 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.

b. Costs to Consumers

The Bureau does not believe the recordkeeping requirements would lead to costs to consumers, beyond any costs that are passed through to consumers by creditors or loan originators.

c. Benefits to Covered Persons

A prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, the Bureau understands that creditors, mortgage brokers, title companies, investors, and other mortgage technology providers use systems with proprietary data formats. As a result, data must be translated between formats as it is transmitted from one point to another throughout the mortgage loan origination process. A standard format should lower those coordination costs. In addition, a standard format may also facilitate innovation in the financial services industry by making it easier for technology companies to create new programs that improve the mortgage origination process and lower industry costs, instead of tailoring programs to each firm's unique proprietary data format; may lower ongoing costs by facilitating industry adoption of mortgage documentation technology and reducing industry's reliance on paper files; and may ease the burden of staff time and resources devoted to on-site supervisory examinations by allowing for remote examinations of compliance. All of these benefits may reduce industry cost and burden in the long run, thereby reducing costs to consumers as well.

The Bureau is aware that there are various efforts currently underway to standardize the format for storage and transmission of mortgage origination-related data. To the extent that the Bureau's proposal may advance these efforts toward a standard electronic record format, the proposal may help eliminate multiple data formats, thereby increasing efficiency in the origination

process, reducing industry costs in the long term, and reducing costs to consumers. Also, the Bureau is aware that many firms currently face significant internal costs for maintaining multiple internal technological systems. To the extent the Bureau's efforts reduce uncertainly regarding the eventual standard, a single data format specified by the Bureau may lower costs by enabling creditors to migrate from older data formats to a single, standard data format.

d. Costs to Covered Persons

The proposed rule may result in costs to covered persons. Under current rules, creditors must retain evidence of compliance with the disclosure requirements in Regulation X (*i.e.,* a copy of the RESPA settlement statement) and Regulation Z (*i.e.,* evidence of compliance generally) for five years and two years, respectively, but are not required to maintain such evidence an electronic, readable format. 12 CFR 1024.10(e); 1026.25. Based on industry feedback, the Bureau understands that firms currently rely on electronic systems for most aspects of the mortgage loan origination process, including electronic record creation and storage. Not all lenders currently maintain data in a machine-readable format, and those who do may not retain it in the format that may ultimately be adopted. To comply with the proposed record retention provisions, therefore, creditors may be required to reconfigure existing document production and retention systems. For creditors that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in a standard machine readable format will impose a substantial burden, as the only requirement will be to output existing data to a new format and then store that data. The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the new proposed Loan Estimate and Closing Disclosure. Similarly, creditors that rely on vendors would likely rely on vendor software and systems to comply with the data retention requirement; at least one vendor already offers indefinite data storage to customers that use their Web-based origination services.

The Bureau estimates that creditors with existing electronic storage systems would need to expend 40 hours of software and IT staff time to develop the ability to export data from existing systems to a standardized format. This would apply to the creditors that maintain their own systems—the 20 largest and five percent of other creditors (14,354*0.05 = 718, rounded to the nearest whole entity)—for a total of (718+20)*40 = 29,520 hours. Assuming an hourly labor cost of software and IT staff of $54, based on information from the Bureau of Labor Statistics, gives a total dollar cost of 29,520*$54 = $1,600,000 (rounded to nearest $100,000). Amortized over five years, this is an annual cost of roughly $320,000 for all mortgage creditors combined. Compared to total mortgage originations of 8,000,000 per year, this amounts to pennies per origination.

The Bureau understands that requiring standardized, electronic records may be a significant burden for covered persons that do not currently have such electronic filing systems. To reduce the burden on small entities, the Bureau is considering an exemption from the electronic data retention requirements. *See* part VI, section-by-section analysis for proposed § 1026.25.

7. Expanded Definition of Finance Charge

The proposed rule expands the definition of the finance charge for closed-end transactions secured by real property or a dwelling, consistent with the Board's 2009 Closed-End Proposal.

As discussed more fully in part VI, section-by-section analysis for proposed § 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 for consumers 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.

a. Proposed Definition of Finance Charge and Other Federal Regulation

The Bureau recognizes that the proposed more inclusive finance charge could affect coverage under other laws, such as higher-priced mortgage loan and HOEPA protections, and that a more inclusive finance charge has implications for the HOEPA, Escrows, Appraisals, and Ability to Repay rulemakings identified in part II.F above. Absent further action by the Bureau, the more inclusive finance charge would:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans.[206] The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge would affect both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under Dodd-Frank will depend on comparisons to the average prime offer rate (APOR)) for defining what constitutes a high-cost loan.
- Cause more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien higher-priced mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Cause more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals for ''higher-risk'' mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduce the number of loans that would otherwise be ''qualified mortgages'' under the Dodd-Frank Act Ability to Repay requirements, given that qualified mortgages cannot have points and fees in excess of three

[206] Under 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 APOR by a specified threshold (APR coverage test); or if 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 is that more loans might exceed HOEPA's points and fees threshold because new categories of charges would be 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 result in some additional loans being covered as high-cost mortgages because closed-end loans would have higher APRs. There are currently some differences between APR and the average prime offer rate, which is generally calculated using data that includes only contract interest rate and points but not other origination fees. *See* 75 FR 58660–58662. 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 also include most third-party charges, would widen the disparity between the APR and APOR and cause more closed-end loans to qualify as a high-cost mortgage. The Bureau notes that substantially similar implications would apply to each respective rulemaking in which coverage depends on comparing a transaction's APR to the applicable APOR. In addition, the Bureau notes 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 applies only to closed-end loans. Therefore, the Bureau notes that the more inclusive finance charge would not affect the potential coverage of open-end credit plans under HOEPA.

percent of the loan amount. Also, more loans could be required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and could be ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed-rate, non-higher-priced qualified mortgage loans.[207] Again, status as a higher-priced mortgage loan depends on comparing APR to APOR.

As discussed above in part VI, section-by-section analysis for proposed § 1026.4, and below in section F, the Bureau is seeking data to model the impact of the more expansive definition of finance charge on coverage of each of these regulatory regimes or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels prior to issuing a final rule and is seeking 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.[208]

The Board previously proposed to address these effects by adopting an adjusted points and fees definition and a new metric for determining coverage under APR thresholds, known as the ''transaction coverage rate'' (TCR). The TCR would be based on a modified prepaid finance charge that would include only finance charges retained by the creditor, mortgage broker, or their affiliates, and would therefore more closely approximate existing coverage levels than a more inclusive finance charge. *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).[209] The Bureau has incorporated these measures into its 2012 HOEPA Proposal, and is seeking comment both in that proposal and this rulemaking on additional trigger modifications that could approximate coverage levels under the existing definition of finance charge, such as adjusting the numeric percentage point triggers for APR under HOEPA or other regimes.

If the adjusted points and fees definition, the TCR, or other trigger modifications were adopted in the other rules, the more inclusive finance charge definition would have little or no effect on coverage under those rules although there might still be effects from the expanded definition of finance charge on the coverage of various State mortgage laws and regulations. In addition, because the TCR excludes fees to unaffiliated third-parties, the TCR might result in some loans not triggering one or more of the regulatory regimes discussed above that would qualify under an APR threshold using the current definition of finance charge.[210] The discussion of the costs and benefits of a more inclusive definition of finance charge, below, assumes that the Bureau does not adopt the adjusted points and fees definition, the TCR, or other methods of addressing the impact of a more inclusive approach to the finance charge in the other rulemakings. If the Bureau does adopt those measures, the effects of the proposed definition of finance charge would be muted. For instance, the benefits of a simpler APR calculation may be lessened if creditors are required to use different metrics for purposes of disclosure and for determining coverage under various regulatory regimes, although as discussed below with regard to transaction coverage rate both metrics would be easier to calculate than APR using the existing definition of finance charge. In addition, the effects (both benefits and costs) through expanded coverage of those other rules would be eliminated or (in the case of TCR) somewhat reduced.

b. Benefits to Consumers

The proposed rule may benefit consumers by making the finance charge and corresponding APR more meaningful disclosures of the cost of credit for closed-end transactions secured by real property or a dwelling. Certain limitations on the usefulness of APR as a price comparison tool, however, such as the assumption in the calculation that the loan will be paid as according to the note to maturity and not pre-paid, may limit this benefit. Consumers may benefit from the expanded finance charge definition to the extent it discourages the proliferation of certain ''junk fees,'' such as fees for preparing loan-related documents, which are currently excluded from the finance charge.

As discussed above, if the expanded definition of finance charge is adopted without modifications to the triggers, the more inclusive finance charge definition would cause more loans to be classified as high-cost mortgages under HOEPA, higher-priced mortgage loans under the Escrows and Ability to Repay rulemakings, and/or higher-risk mortgage loans under the Appraisals rulemaking. The more inclusive finance charge could also affect the number of mortgages that meet the definition of a qualified mortgage under the Ability to Repay rulemaking.

Absent modifications to the triggers, this would result in more consumers receiving the benefits of one or more of the regulatory regimes described above. In the context of the HOEPA rulemaking, the benefits to consumers could include, for example, a better understanding of the risks associated with the loan through additional disclosures (which, in turn, may reduce the likelihood a consumer takes out a mortgage he or she cannot afford), better loan terms due to increased shopping, and an absence of loan features whose associated risks may be difficult for consumers to understand. Consumers

[207] Specifically, the Dodd-Frank Act generally prohibits prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed-rate qualified mortgages that are not higher-priced mortgage loans. For balloon loans, the Dodd-Frank Act generally requires 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. Only consumers with substantial income or assets would likely qualify for such a loan. A separate Dodd-Frank Act provision authorizing balloon loans made by creditors that operate predominantly in rural or underserved areas is not affected by the finance charge issue.

[208] In its 2009 proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains 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 are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded, and that the share of first-lien loans in the range of typical home purchases or refinancings ($175,000 to $225,000) that qualified as higher-priced mortgage loans would increase by 3 percent. The Board also looked at the impact on two states and the District of Columbia because their anti-predatory lending laws had triggers below the level of the historical HOEPA APR threshold, which is benchmarked to U.S. Treasury securities. The Board concluded that the percentage of first-lien loans subject to those laws would increase by 2.5 percent in the District of Columbia and 4.0 percent in Illinois, but would not increase in Maryland. The Bureau is considering the 2010 version of the Bankrate.com survey, but as described in this notice the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

[209] The wording of the Board's proposed definition of ''transaction coverage rate'' 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 proposes to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates.

[210] As discussed above in part VI, section-by-section analysis for proposed § 1026.4, the Bureau believes that the margin of differences between the TCR and current APR is significantly smaller than the margin between the current APR and the APR calculated using the expanded finance charge definition because relatively few third-party fees would be excluded by the TCR that are not already excluded under current rules. The Bureau is considering ways to supplement the data analysis described above to better assess this issue, and seeks comment and data regarding the potential impacts of the TCR relative to APR calculated using the current and proposed definitions of finance charge.

could also benefit from more loans being classified as higher-priced under the Escrows or Ability to Repay rulemakings. Under the Escrows rulemaking, more transactions would be required to include escrow accounts for the payment of recurring costs such as taxes and hazard insurance, which could assist more consumers in planning for such costs. Under the Ability to Repay rulemaking, fewer loans could be permitted to have prepayment penalties whose associated risks may be difficult for consumers to understand, more loans could be subject to the separate underwriting standards required for higher-priced balloon loans, which could help to ensure consumers' ability to repay such loans, and fewer loans would be classified as ''qualified mortgages.'' Finally, in the Appraisals rulemaking, an increase in the number of loans classified as higher-risk could benefit consumers because more transactions would be subject to the requirement that creditors obtain one or more interior appraisals before extending credit.

Alternatively, the expanded definition of finance charge may benefit consumers if creditors lower the fees or interest rate on the loan a consumer receives so as to maintain eligibility as a qualified mortgage or to avoid coverage by those other consumer protection laws.

c. Costs to Consumers

Without modifications to the triggers, the proposed more inclusive finance charge could impose direct costs on some consumers. For instance, the cost of obtaining an initial interior appraisal may be passed on to consumers under the Dodd-Frank Act requirements for higher-risk mortgages. The additional protections required under the various regulations may also lead to higher cost of credit for some consumers or reduced access to credit if creditors choose not to make loans that would be classified as high-cost, higher-priced, or higher-risk, or if consumers cannot qualify for credit as a result of the separate underwriting standards that could apply to higher-priced balloon loans.

d. Benefits to Covered Persons

The proposed rule may benefit covered persons by easing regulatory burden and litigation risk associated with the current complex rules for determining which fees are part of the finance charge. Because the current rules for determining which fees are part of the finance charge are complicated and unclear, creditors will benefit from a simpler, more inclusive definition. In particular, feedback received by the Bureau and comments on a similar proposal issued by the Board in the 2009 indicate that, because a failure to calculate the finance charge and the APR accurately gives rise to the right of rescission, creditors incur substantial compliance costs attempting to make accurate calculations and incur substantial litigation costs defending against claims of inaccurate calculations.

e. Costs to Covered Persons

To comply with the proposed rule, creditors may be required to update compliance systems to reflect changes to the finance charge calculation. These updates may involve one-time costs associated with software updates, legal expenses, and personnel training time. As discussed above, if the Bureau adopts the proposal, it expects to provide an implementation period that would coincide either with implementation of the disclosure modifications or with implementation of certain changes to coverage of HOEPA and other regulatory regimes that would be affected by the change in definition. Accordingly, the Bureau believes that software changes and other expenses would be incurred as part of the overall software and compliance system revisions required to comply with the other simultaneous changes, and therefore would not impose a substantial additional burden.

As discussed above, the proposed rule if it were implemented without modifications to the triggers for various regulatory regimes might cause more loans to cross Federal and State high-cost or high-priced loan thresholds based on APR or points and fees. With respect to the HOEPA and Appraisals rulemakings, creditors may incur costs associated with generating and providing HOEPA and appraisal disclosures for additional loans. Creditors may incur additional costs in the context of the Appraisals rulemaking because the Dodd-Frank Act prohibits creditors from charging consumers for second appraisals conducted in connection with certain properties that have been sold in the last 180 days. Similarly, in the context of the Escrows rulemaking, creditors may incur costs associated with maintaining escrow accounts on more transactions if not subject to other exceptions provided by the Dodd-Frank Act. With respect to the Ability to Repay rulemaking, creditors may incur costs associated with making fewer loans with prepayment penalties, or may incur costs from the additional underwriting requirements and/or liability associated with making more loans that are higher-priced balloon loans or that are not qualified mortgages.

In addition, a small number of creditors may also lose a very small fraction of revenue if they are reluctant to make high-cost, higher-priced, or higher-risk mortgage loans and cannot offer alternatives that are as profitable as those loans.

As discussed in more detail in the 2012 HOEPA Proposal, modifying the triggers would require some one-time implementation costs and would create some additional compliance complexity if creditors must use different metrics for disclosure purposes and for determining coverage under particular regulatory regimes. However, with regard to the TCR, the Bureau believes that such impacts would be addressed by the fact that both TCR and APR using the expanded definition of finance charge would be easier to calculate than APR under the current definition. On balance, the Bureau believes adoption of the proposed trigger modifications would reduce the economic impacts on creditors of the more expansive definition of finance charge.

8. Implementation of New Disclosures Mandated by the Dodd-Frank Act

The proposed rule exempts creditors temporarily from compliance with certain new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act until the TILA–RESPA rule takes effect.

As discussed more fully in part V.B, above, title XIV of the Dodd-Frank Act adds new disclosure requirements to TILA and RESPA for 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 believes these disclosures should be included in the integrated forms because doing so would 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 would 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 delayed implementation of the new disclosure requirements, although, as noted above, covered persons may incur additional recurring costs associated with calculating and disclosing this

additional information to consumers once the implementing rules take effect.

9. Other Costs of Complying with the Proposed Regulation

Covered persons will need to learn about the requirements of the regulation and determine what changes to their business practices they would be required to make to come into compliance. These costs will vary considerably across institutions, depending on the size and complexity of their operations. In addition, some firms will rely on their own staff to conduct this analysis, while others will rely on outside counsel, industry sources, or compliance firms. Firms that use compliance systems provided by outside vendors, especially smaller creditors, will likely rely in large part on those vendors to determine what changes they need to make, reducing the burden on those creditors.

E. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

Other than as noted here, the Bureau believes that the impact of the rule on depository institutions and credit unions with $10 billion or less in total assets will be similar to those for creditors as a whole. The primary difference in the impact on these institutions is likely to come from differences in the compliance systems and software of these institutions.

As discussed above, 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 95 prercent of smaller creditors, which includes the vast majority of those with assets less than $10 billion, primarily rely on software and compliance systems provided by outside vendors. As described above, the use of vendors by smaller creditors will substantially mitigate the costs of revising software and compliance systems, as vendor software updates would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors.

As discussed above, based on small entities that participated in the Small Business Review Panel process, the Bureau estimates that the small fraction of smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to update their systems to comply with the proposal. The Bureau estimates that there were a total of 11,749 banks, savings institutions, and credit unions with assets less than $10 billion that originated mortgages in 2010, the most recent year for which complete data are available, and that all but one of them was outside the top twenty mortgage originators.[211] The total estimated cost for these few smaller creditors that maintain their own compliance software and systems is therefore $100,000*11,749*5% = $58,700,000 (rounded to the nearest $100,000). Amortized over five years, the annual costs are $11,750,000 for all smaller depository mortgages lenders and credit unions that make mortgages combined.

The one creditor in the largest 20 mortgage creditors that is a depository institution and has assets under $10,000,000 would need to revise its compliance software and systems. The Bureau estimates that the cost for this creditor would be $1,000,000; amortized over five years this is an annual cost of $200,000.

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 two hours of training, and, as described above, each ten hours of trainee time would require an additional hour of trainer time. Assuming the same ratio of loan officers to originations at these institutions as for the industry as a whole, the Bureau estimates that there are roughly 28,000 loan officers that would need training at these institutions.[212] Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation is $46 per hour for a loan officer and $39 per hour for a trainer, for a total training cost of (28,000*2*$46)+(2,800*2*$39) = 2,800,000 (rounded to the nearest $100,000). Amortized over five years, this is an annual cost of $560,000 for all smaller depository mortgage lenders and credit unions that make mortgage loans combined.

Taken together, the Bureau estimates that the total one-time costs of complying with the proposed Loan Estimate and Closing Disclosure for these institutions would be roughly $62,500,000. Amortized over five years, this is an annual cost of $12,500,000 for all smaller depository mortgage lenders and credit unions that make mortgage loans combined. The Bureau estimates that these creditors made roughly 2.6 million originations in 2010. The estimated one-time cost is therefore less than $5.00 per origination.

As discussed above, to comply with the proposed record retention provisions, creditors may be required to reconfigure existing document production and retention systems. The Bureau estimates that creditors with existing electronic storage systems would need to expend 40 hours of software and IT staff time to develop the ability to export data from existing systems to a standardized format. This would apply to the creditors that maintain their own systems—the one depository institution with assets less than $10 billion that is one of the 20 largest mortgage creditors and five percent of other institutions, for a total of 40+(11,749*.05*40) = 23,538 hours. Assuming an hourly labor cost for software and IT staff of $54, based on information from the Bureau of Labor Statistics, gives a total dollar cost of 23,538*$54 = $1,300,000 (rounded to nearest $100,000). Amortized over five years, this is an annual cost of $260,000 for all smaller depository mortgage lenders and credit unions that make mortgage loans combined.

The Bureau understands that requiring standardized, electronic records may be a significant burden for covered persons that do not currently have such electronic filing systems. To reduce the burden on small entities, which will include some depository institutions and credit unions with $10 billion or less in total assets, the Bureau is considering an exemption from the electronic data retention requirements. See part VI, section-by-section analysis for proposed § 1026.25.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits and costs from the proposed 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 than the extent to which other consumers shop, which may affect the benefits of the revised Loan Estimate. The Bureau is unaware of information on these differences, however. To the extent that the impacts of the proposal on creditors differ by type of creditor, this may affect the costs and benefits of the proposal on consumers in rural areas.

The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau

[211] Estimate based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports.

[212] Originations estimates based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports.

therefore asks interested parties to provide data, research results and other factual information on the impact of the proposed rule on consumers in rural areas.

F. Additional Analysis Being Considered and Request for Information

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions before finalizing the proposal. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. In particular, the Bureau seeks additional data to analyze the frequency, magnitude, and type of differences between initial estimates of settlement costs and actual costs. This will enable the Bureau to better estimate the effects of the various aspects of this proposal that relate to settlement costs and how they change between the initial RESPA GFE and closing. In addition, the Bureau asks interested parties to provide general information, data, and research results on:

- How consumers might respond to better mortgage costs disclosures;
- The benefits to consumers of clearer information about their mortgages;
- The potential impact on the functioning of the market and on creditors if consumers better understood their loan;
- The potential impact on creditors of the elimination of the ten percent tolerance for cost changes for certain settlement fees;
- The effects on the role of different market participants of various aspects of the proposal, such as the elimination of the ten percent tolerance for cost changes on certain settlement fees and the alternative proposal that creditors be solely responsible for the provision of the Closing Disclosure;
- The effects of adopting a more inclusive finance charge, including with respect to the rulemakings on HOEPA, Escrows, Appraisals, and Ability to Repay;
- The costs to covered persons of complying with the proposal, such as revising compliance software and systems;
- How often creditors or mortgage brokers obtain additional information from the consumer after the Loan Estimate has been issued that affects the costs of settlement services for the loan and that may cause the creditor or broker to issue a revised Loan Estimate; and
- How often creditors are providing additional disclosures that are not required by the current rules and that they would no longer send if the rules are clarified.

To supplement the information discussed in this preamble and any information that the Bureau may receive from commenters, the Bureau is currently working to gather additional data that may be relevant to this and other mortgage related rulemakings. These data may include additional data from Nationwide Mortgage Licensing System and Registry and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. The Bureau expects that each of these datasets will be confidential. This section now describes each dataset in turn.

First, as the sole system supporting licensure/registration of mortgage companies for 53 agencies for states and territories and mortgage loan originators under the SAFE Act, NMLS contains basic identifying information for nondepository mortgage loan origination companies. Firms that hold a State license or State registration through NMLS are required to complete either a standard or expanded Mortgage Call Report (MCR). The Standard MCR includes data on each firm's residential mortgage loan activity including applications, closed loans, individual mortgage loan originator (MLO) activity, line of credit and other data repurchase information by State. It also includes financial information at the company level. The expanded report collects more detailed information in each of these areas for those firms that sell to Fannie Mae or Freddie Mac.[213] To date, the Bureau has received basic data on the firms in the NMLS and de-identified data and tabulations of data from the Mortgage Call Report. These data were used, along with HMDA data, to help estimate the number and characteristics of nondepository institutions active in various mortgage activities. In the near future, the Bureau may receive additional data on loan activity and financial information from the NMLS including loan activity and financial information for identified lenders. The Bureau anticipates that these data will provide additional information about the number, size, type, and level of activity for nondepository lenders engaging in various mortgage origination and servicing activities. As such, it supplements the Bureau's current data for nondepository institutions reported in HMDA and the data already received from NMLS. For example, these new data will include information about the number and size of closed-end first and second loans originated, fees earned from origination activity, levels of servicing, revenue estimates for each firm and other information. The Bureau may compile some simple counts and tabulations and conduct some basic statistical modeling to better model the levels of various activities at various types of firms. In particular, the information from the NMLS and the MCR may help the Bureau refine its estimates of benefits, costs, and impacts for each of the revisions to the RESPA GFE and settlement statement forms, changes to the HOEPA thresholds, changes to requirements for appraisals, updates to loan originator compensation rules, proposed new servicing requirements, and the new ability to repay standards.

Second, the Bureau is working to obtain a random selection of loan-level data from several lenders. The Bureau intends to request loan file data from lenders of various sizes and geographic locations to construct a representative dataset. In particular, the Bureau will request a random sample of RESPA GFE and RESPA settlement statement forms from loan files for closed-end loans. These forms include data on some or all loan characteristics including settlement charges, origination charges, appraisal fees, flood certifications, mortgage insurance premiums, homeowner's insurance, title charges, balloon payments, prepayment penalties, origination charges, and credit charges or points. Through conversations with industry, the Bureau believes that such loan files exist in standard electronic formats allowing for the creation of a representative sample for analysis. The Bureau may use these data to further measure the impacts of certain proposed changes. Calculations of various categories of settlement and origination charges may help the Bureau calculate the various impacts of proposed changes to the definition of finance charge and other aspects of the proposal, including proposed changes in the number and characteristics of loans that exceed the HOEPA thresholds, loans that would meet the high rate or high risk definitions mandating additional consumer protections, and loans that meet the points and fees thresholds contained in the ability to repay provisions of Dodd-Frank.

Third, the Bureau may also use data from the pilot phases of the National Mortgage Database (NMDB) to refine its proposals and/or its assessments of the benefits, costs, and impacts of these proposals. The NMDB is a

[213] More information about the Mortgage Call Report can be found at *http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx.*

comprehensive database, currently under development, of loan-level information on first lien single-family mortgages. It is designed to be a nationally representative sample (1 percent) and contains data derived from credit reporting agency data and other administrative sources along with data from surveys of mortgage borrowers. The first two pilot phases, conducted over the past two years, vetted the data development process, successfully pretested the survey component and produced a prototype dataset. The initial pilot phases validated that sampled credit repository data are both accurate and comprehensive and that the survey component yields a representative sample and a sufficient response rate. A third pilot is currently being conducted with the survey being mailed to holders of five thousand newly originated mortgages sampled from the prototype NMDB. Based on the 2011 pilot, a response rate of fifty percent or higher is expected. These survey data will be combined with the credit repository information of non-respondents, and then de-identified. Credit repository data will be used to minimize non-response bias, and attempts will be made to impute missing values. The data from the third pilot will not be made public. However, to the extent possible, the data may be analyzed to assist the Bureau in its regulatory activities and these analyses will be made publically available.

The survey data from the pilots may be used by the Bureau to analyze consumers' shopping behavior regarding mortgages. For instance, the Bureau may calculate the number of consumers who use brokers, the number of lenders contacted by borrowers, how often and with what patterns potential borrowers switch lenders, and other behaviors. Questions may also assess borrowers' understanding of their loan terms and the various charges involved with origination. Tabulations of the survey data for various populations and simple regression techniques may be used to help the Bureau with its analysis.

The Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. The Bureau also requests comment on the use of the data described above.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. 5 U.S.C. 601 *et seq.* The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required. 5 U.S.C. 609.

The Bureau has not certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the Bureau convened and chaired a Small Business Review Panel to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The Small Business Review Panel for this rulemaking is discussed below in part VIII.A.

The Bureau is publishing an IRFA. Among other things, the IRFA estimates the number of small entities that will be subject to the proposed rule and describe the impact of that rule on those entities. The IRFA for this rulemaking is set forth below in part VIII.B.

A. Small Business Review Panel

Under section 609(b) of the RFA, as amended by SBREFA and the Dodd-Frank Act, the Bureau seeks, prior to conducting the IRFA, information from representatives of small entities that may potentially be affected by its proposed rules to assess the potential impacts of that rule on such small entities. 5 U.S.C. 609(b). Section 609(b) sets forth a series of procedural steps with regard to obtaining this information. The Bureau first notifies the Chief Counsel for Advocacy (Chief Counsel) of the U.S. Small Business Administration (SBA) and provides the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the types of small entities that might be affected. 5 U.S.C. 609(b)(1). Not later than 15 days after receipt of the formal notification and other information described in section 609(b)(1) of the RFA, the Chief Counsel then identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule (the small entity representatives, or SERs). 5 U.S.C. 609(b)(2). The Bureau convenes a review panel for such rule consisting wholly of full time Federal employees of the office within the Bureau responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs (OIRA) within the U.S. Office of Management and Budget (OMB), and the Chief Counsel (collectively, the Small Business Review Panel or Panel). 5 U.S.C. 609(b)(3). The Panel reviews any material the Bureau has prepared in connection with the SBREFA process and collects advice and recommendations of each individual small entity representative identified by the Bureau after consultation with the Chief Counsel on issues related to sections 603(b)(3) through (b)(5) and 603(c) of the RFA.[214] 5 U.S.C. 609(b)(4). Not later than 60 days after the date the Bureau convenes the Small Business Review Panel, the Panel reports on the comments of the SERs and its findings as to the issues on which the Panel consulted with the SERs, and the report is made public as part of the rulemaking record. 5 U.S.C. 609(b)(5). Where appropriate, the Bureau modifies the rule or the IRFA in light of the foregoing process. 5 U.S.C. 609(b)(6).

On February 7, 2012, the Bureau provided the Chief Counsel with the formal notification and other information required under section 609(b)(1) of the RFA. To obtain feedback from small entity representatives to inform the Panel pursuant to sections 609(b)(2) and 609(b)(4) of the RFA, the Bureau, in consultation with the Chief Counsel, identified six categories of small entities that may be subject to the proposed rule for purposes of the IRFA: commercial banks/savings institutions, credit unions, mortgage brokers, mortgage companies (non-bank lenders), settlement (closing) agents, and nonprofit organizations. These are the categories of entities that may be required to provide, and maintain

[214] As described in the IRFA in part VIII.B, below, sections 603(b)(3) through (b)(5) and 603(c) of the RFA, respectively, require a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply; a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(b)(3)–(5), 603(c).

related records on, the integrated mortgage disclosures, either because they may make mortgage loans subject to the proposed rule or because they may be responsible for completing or providing required disclosures. Part VIII.B.3, below, describes in greater detail the Bureau's analysis of the number and types of entities that may be affected by the proposed rule. Having identified the categories of small entities that may be subject to the proposed rule for purposes of an IRFA, the Bureau, in consultation with the Chief Counsel, selected 16 SERs to participate in the SBREFA process. As described in chapter 7 of the Panel's report (described below), the SERs included representatives from each of the categories identified by the Bureau and comprised a diverse group of individuals with regard to geography and type of locality (*i.e.,* rural, urban, or suburban areas).

On February 21, 2012, the Bureau convened the Panel pursuant to section 609(b)(3) of the RFA. To collect the advice and recommendations of the SERs under section 609(b)(4) of the RFA, the Panel held an outreach meeting/teleconference with the SERs on March 6, 2012 (the Panel Outreach Meeting). To help the SERs prepare for the Panel Outreach Meeting, the Panel circulated briefing materials prepared in connection with section 609(b)(4) of the RFA that summarized the proposals under consideration at that time, posed discussion issues, and provided information about the SBREFA process generally.[215] All 16 SERs participated in the Panel Outreach Meeting either in person or by telephone. The Panel also provided the SERs with an opportunity to submit written feedback. In response, the Panel received written feedback from 12 of the representatives.[216]

On April 23, 2012, the Panel submitted to the Director of the Bureau, Richard Cordray, a written report (the Small Business Review Panel Report) that includes the following: background information on the proposals under consideration at the time; information on the types of small entities that would be subject to those proposals and on the SERs who were selected to advise the Panel; a summary of the Panel's outreach to obtain the advice and recommendations of those SERs; a discussion of the comments and recommendations of the SERs; and a discussion of the Panel findings, focusing on the statutory elements required under section 603 of the RFA. 5 U.S.C. 609(b)(5).[217]

In preparing this proposed rule and the IRFA, the Bureau has carefully considered the feedback from the SERs participating in the SBREFA process and the findings and recommendations in the Small Business Review Panel Report. The section-by-section analysis of the proposed rule in part VI, above, and the IRFA discuss this feedback and the specific findings and recommendations of the Panel, as applicable. The SBREFA process provided the Panel and the Bureau with an opportunity to identify and explore opportunities to minimize the burden of the rule on small entities while achieving the rule's purposes. It is important to note, however, that the Panel prepared the Small Business Review Panel Report at a preliminary stage of the proposal's development and that the Panel Report—in particular, the Panel's findings and recommendations—should be considered in that light. Also, the Small Business Review Panel Report expressly stated that options it identified for reducing the proposed rule's regulatory impact on small entities were subject to further consideration, analysis, and data collection by the Bureau to determine if the options identified were practicable, enforceable, and consistent with TILA, RESPA, the Dodd-Frank Act, and their statutory purposes. The proposed rule and the IRFA reflect further consideration, analysis, and data collection by the Bureau.

B. Initial Regulatory Flexibility Analysis

Under section 603(a) of the RFA, an IRFA ''shall describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires the IRFA to contain a description of the reasons why action by the agency is being considered. 5 U.S.C. 603(b)(1). Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule. 5 U.S.C. 603(b)(2). The IRFA further must contain a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply. 5 U.S.C. 603(b)(3). Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record. 5 U.S.C. 603(b)(4). In addition, the Bureau must identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule. 5 U.S.C. 603(b)(5). The Bureau, further, must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(b)(6). Finally, as amended by the Dodd-Frank Act, section 603(d) of the RFA requires that the IRFA include a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues. 5 U.S.C. 603(d)(1); Dodd-Frank Act section 1100G(d)(1).

1. Description of the Reasons Why Agency Action Is Being Considered

As discussed in part II, above, for more than 30 years, TILA and RESPA have required lenders 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.

a. TILA/Regulation Z

In connection with any closed-end credit transaction secured by a 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 (*i.e.,* the early TILA disclosure). If the APR on the early TILA disclosure becomes inaccurate, TILA requires the creditor to

[215] The Bureau posted these materials on its Web site and invited the public to email remarks on the materials. *See http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-convenes-small-business-panel-for-know-before-you-owe-mortgage-disclosures/* (the materials are accessible via the links within this document).

[216] This written feedback is attached as appendix A to the written report of the Panel, discussed below.

[217] *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements,* dated April 23, 2012. As discussed above, this report is available on the Bureau's Web site.

provide a corrected disclosure at least three business days before closing (*i.e.,* the corrected TILA disclosure). TILA requires that the disclosures be provided in final form at the time of consummation (*i.e.,* the final TILA disclosure). *See* part II.C, above.

b. RESPA/Regulation X

In connection with any federally related mortgage loan, RESPA and Regulation X require that lenders 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 (*i.e.,* 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 (*i.e.,* the RESPA settlement statement). *See* part II.B above.

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 above 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 (*i.e.,* 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 (*i.e.,* 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, the Dodd-Frank Act consolidated rulemaking authority for RESPA and TILA 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. 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.[218]

The proposed 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 is being considered, see the background discussion for the proposed rule in part II, above.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

As described above, the proposed 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.'' 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 one 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). 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 proposed rule also is intended to provide other benefits for consumers. First, the new prototype 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 proposed rule seeks to improve consumers' ability to shop by more clearly delineating between estimates regulated by TILA and RESPA and non-binding preapplication estimates. Third, the proposed 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.[219]

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 proposed rule clarifies and streamlines aspects of the current rules that have been identified as confusing by lenders, mortgage brokers, mortgage companies, and settlement agents, as well as for consumers who receive the disclosures. The Bureau believes that these clarifications will resolve ambiguities, eliminate redundant or unnecessary disclosures, and more effectively

[218] Section 1419 of the Dodd-Frank Act, adding section 128(a)(17) to TILA.

[219] This discussion of the proposed rule's benefits to consumers is intended to be illustrative, not exhaustive. Additional consumer benefits that may result from the proposed rule are discussed in other sections of the proposed rule.

disclose mortgage loan terms and costs to consumers.

The legal basis for the proposed rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part VI, above.

3. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small nonprofit organizations, and small government 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.[220] 5 U.S.C. 601(3). Under such standards, banks and other depository institutions are considered ''small'' if they have $175 million or less in assets, and for other financial businesses, the threshold is average annual receipts (*i.e.,* annual revenues) that do not exceed $7 million.[221]

During the Small Business Review Panel process, the Bureau identified six categories of small entities that may be subject to the proposed 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 SBA small entity thresholds for those categories are: (1) Commercial banks [222] with up to $175,000,000 in assets, (2) credit unions with up to $175,000,000 in assets, (3) mortgage brokers with up to $7,000,000 in annual revenue, (4) mortgage companies (non-bank lenders) with up to $7,000,000 in annual revenue, (5) settlement (closing) agents with up to $7,000,000 in annual revenue, and (6) nonprofit organizations that are not for profit, independently owned and operated, and not dominant in the field.

Since the time the Small Business Review Panel Report was completed, some of the data sources that the Bureau used to estimate the numbers of small entities of different types have released updated information and the Bureau has revised some aspects of the estimation procedure. The following table provides the Bureau's revised estimates of the number and types of entities that may be affected by the proposed rule: [223]

[220] The current SBA size standards are found on SBA's Web site at *http://www.sba.gov/content/table-small-business-size-standards.*

[221] *See id.*

[222] 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.

[223] 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.

Table 1: 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	$175,000,000 assets	7,741	4,255	7,500	4,084
Credit unions[b]	522130	$175,000,000 assets	7,491	6,569	4,359	3,441
Mortgage companies (Non-bank lenders)[c]	522292	$7,000,000 revenues	2,515	2,282	2,515	2,282
Mortgage brokers[c]	522310	$7,000,000 revenues	8,051	8,049	8,051	8,049
Settlement agents[d]	541191	$7,000,000 revenues	8,261	8,131	8,261	8,131

a. Asset size obtained from December 2010 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of lenders originating any closed-end mortgages is based on 2010 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 2010 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 Nationwide Mortgage Licensing System and Registry Mortgage Call Report (MCR) data for Q2 and Q3 of 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. Revenue was not available for over 90 percent of entities considered to be engaged in closed-end mortgage transactions. To estimate the number of small entities, revenue for entities that did not report revenue is estimated based on the dollar value and number of loans originated and the dollar value and number of loans brokered. Because such a large share of observations are missing revenue information, the estimated number of small entities may contain substantial estimation uncertainty and may be more sensitive to model specification than if revenue were available for a larger fraction of entities. Entities that are considered to have brokered but not originated any closed-end mortgages and that did not report revenue are assumed to be small entities because nearly every entity that reported revenue that brokered but did not originate loans had revenue less than $7 million.

d. Total number of entities and small entities estimated based on 2007 Economic Census data for firms operated for the entire year. All entities are assumed to engage in closed-end mortgage transactions.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an 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

The proposed rule does not impose new reporting requirements. The proposed rule does, however, impose new recordkeeping and 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, while the recordkeeping requirements do not. 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 proposed rule does not impose new reporting requirements.

b. Recordkeeping Requirements

The proposed rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The proposed retention period is three years for the Loan Estimates and five years for the Closing Disclosures. *See* part VI above, section-by-section analysis for proposed § 1026.25.

i. Benefits to Small Entities

A prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, the Bureau understands that creditors, mortgage brokers, title companies, investors, and other mortgage technology providers use systems with proprietary data formats. As a result, data must be translated between formats as it is transmitted from one point to another throughout the mortgage loan origination process. A standard format should lower those coordination costs. In addition, a standard format may also facilitate innovation in the financial services industry by making it easier for technology companies to create new programs that improve the mortgage origination process and lower industry costs, instead of tailoring programs to each firm's unique proprietary data format; may lower ongoing costs by facilitating industry adoption of mortgage documentation technology and reducing industry's reliance on paper files; and may ease the burden of staff time and resources devoted to on-site supervisory examinations by allowing for remote examinations of compliance. All of these benefits may reduce industry cost and burden in the long run, thereby reducing costs to consumers as well.

The Bureau is aware that there are various efforts currently underway to standardize the format for storage and transmission of mortgage origination related data. To the extent that the Bureau's proposal may advance these efforts toward a standard electronic record format, the proposal may help eliminate multiple data formats, thereby increasing efficiency in the origination process, reducing industry costs in the long term, and reducing costs to consumers. Also, the Bureau is aware that many firms currently face significant internal costs for maintaining multiple internal technological systems. To the extent the Bureau's efforts reduce uncertainly regarding the eventual standard, a single data format specified by the Bureau may lower costs by enabling creditors to migrate from older data formats to a single, standard data format.

ii. Costs to Small Entities

The proposed rule may result in costs to small entities. Under current rules, creditors must retain evidence of compliance with the disclosure requirements in Regulation X (*i.e.,* a copy of the RESPA settlement statement) and Regulation Z (*i.e.,* evidence of compliance generally) for five years and two years, respectively, but are not required to maintain such evidence an electronic, machine readable format. 12 CFR 1024.10(e); 1026.25. Based on industry feedback, the Bureau understands that firms currently rely on electronic systems for most aspects of the mortgage loan origination process, including electronic record creation and storage. Not all small creditors currently maintain data in a machine-readable format, however, and those who do may not retain it in the format that may ultimately be adopted. To comply with the proposed record retention provisions, therefore, creditors may be required to reconfigure existing document production and retention systems. For small creditors that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in a standard machine readable format will impose a substantial burden, as the only requirement will be to output existing data to a new format and then store that data. The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the new proposed Loan Estimate and Closing Disclosure. Similarly, small creditors that rely on vendors would likely rely on vendor software and systems to comply with the data retention requirement; at least one vendor already offers indefinite data storage to customers that use their web-based compliance tool.

The Bureau understands, however, that requiring standardized, electronic records may be a significant burden for small creditors that do not currently have such electronic filing systems or use vendor software. To reduce the burden on small entities, the Bureau is considering an exemption from the electronic data retention requirements. See part VI above, section-by-section analysis for proposed § 1026.25.

c. Compliance Requirements

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The analysis below considers the benefits, costs, and impacts of the following major proposed provisions and the additional proposed modifications 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. The disclaimer on pre-application written estimates,
4. Permissible changes to settlement costs and re-disclosure of initial disclosures,
5. Provision of the Closing Disclosure,
6. The definition of the finance charge, and
7. Implementation of new disclosures mandated by the Dodd-Frank Act.

The analysis examines the benefits, costs, and impacts of the major provisions of the proposed 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, those are combined with the benefits, costs, and impact 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.

The Bureau generally requests comment on the proposed provisions and additional proposed modifications and on the Bureau's assessment of the benefits, costs, and impacts on small entities of the major proposed provisions and additional proposed modifications.

i. Integrated Initial and Closing Disclosures

The proposed 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 prescribed RESPA GFE and settlement statement forms). Accordingly, the Bureau is proposing to require the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA, other than reverse mortgages. For transactions that are subject only to TILA, however, the forms would be model disclosures, consistent with the provisions of that statute. The proposed 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 revised 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 would replace a three-page RESPA GFE and two-page early TILA disclosure, as well as incorporate other new disclosure requirements in the Dodd-Frank Act that might otherwise be provided separately.

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, the Bureau is alternatively proposing and soliciting comment on removing from the integrated forms certain disclosures, such as the total interest percentage and costs of funds, which may be difficult to explain to consumers. Information submitted by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. Based on an industry estimate of a typical hourly wage of a settlement agent of $31 per hour, this translates into a dollar savings from the simplified closing forms of $16.50 per closing. Some portion of these savings would likely be passed on to the 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 would result in certain compliance costs to small entities. 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. In addition, the Bureau believes that 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 produce the new forms. In addition to changing the format of the required forms, the new proposed forms would include several new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information would 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 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. Based on industry feedback, the Bureau believes that that 95 percent of creditors outside the top 20 rely on vendors, and it is likely the case that the percentage of small creditors using vendors is even higher than this. 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 a leading mortgage origination technology provider, the Bureau believes that these updates would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors. More than 95 percent of small creditors, therefore, would not pay directly for software updates to comply with the new rules.

Based on 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 proposal.[224] The total cost for these smaller creditors that maintain their own compliance software and systems is therefore $100,000*9,807*5%=$49,000,000 (rounded to the nearest $100,000). As noted above, the share of small entities that maintain their own compliance software and systems is likely less than five percent, so this is likely an over-estimate of the costs of revising these systems.

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 two hours of training, and that one trainer would be needed for each ten trainees. Assuming the same ratio of loan officers to originations at small creditors as for the industry as a whole, the Bureau estimates that there are 20,000 loan officers that would need training at these institutions.[225] Based

[224] Small entities that participated in the Small Business Review Panel process provided a wide range of estimates. *See* Small Business Review Panel Report at 17–20.

[225] Originations estimates based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports.

on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation is $46 per hour for a loan officer and $39 per hour for a trainer, for a total training cost of (20,000*2*$46)+(2,000*2*$39) = $2,000,000 (rounded to the nearest 100,000).

Taken together, the Bureau estimates that the total one-time costs for small entities of complying with the proposed Loan Estimate and Closing Disclosure would be roughly $51,000,000. As discussed above, firms are expected to amortize this cost over a period of years and in this analysis all costs are amortized over five years, using a simple straight-line amortization. Amortizing this one-time cost of compliance over five years yields an annual cost of $10,200,000. The Bureau estimates that these creditors made roughly 1.4 million originations in 2010. The estimated annualized one-time cost is therefore less than $8 per origination.

ii. Definition of Loan Application

The proposed rule revises the regulatory definition of loan application to encourage earlier provision of the Loan Estimate to consumers.

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 part VI above, section-by-section analysis for proposed § 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) monthly income; (3) social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until relatively late in the loan process by delaying collection of information deemed ''necessary.'' The Bureau understands that some creditors currently provide non-binding written estimates of loan terms or settlement charges prior to issuing the early TILA disclosure or RESPA GFE. The current rules encourage creditors and mortgage brokers to provide the good faith estimates early in the loan process by prohibiting creditors from collecting any fees from a consumer (other than a credit report fee) until the estimates are provided. To further encourage early provision of estimates, the proposed rule removes the seventh item (''any other information deemed necessary by the lender'') 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 consumer 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, 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.'' As discussed in part VII.F, above, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue.

iii. Disclaimer on Pre-Application Estimates

The Bureau is proposing to require that any pre-application, consumer-specific written estimate of loan terms or settlement charges contain a prominent disclaimer indicating that the document is not the Loan Estimate required by TILA and RESPA. This requirement would not apply to general advertisements.

Costs to Small Entities. To the extent small creditors and mortgage brokers currently provide such pre-application written estimates to consumers they would bear the costs of adding a disclaimer to those communications. However, the Bureau expects such costs to be de minimis since the Bureau is proposing a brief, standard statement for use by creditors, which should not require significant redesign of existing estimate materials or require additional pages.

iv. Changes in Settlement Costs/Redisclosures

The proposed 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 part VI, section-by-section analysis for proposed § 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 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 ten percent unless an exception applies (''ten percent tolerance''); and other charges that are not subject to any limitation on increases (''no tolerance''). The rule permits certain limited exceptions in which higher charges are permitted, such as when the consumer 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 proposed 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 proposed 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 would be considered 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).

For a sense of the scale of the potential impact, it is worth considering an extreme hypothetical example where all of the settlement services move from the ten percent tolerance category to the zero tolerance category. This is unlikely to happen in practice, but illustrates the largest possible effect of the regulatory change. For a loan with a total of $3,000 in settlement costs the maximum effect of the proposal would be that the creditor could not pass on $300 in cost

increases that occurred without an exception allowing the increase to be passed on the consumers.

Benefits to Small Entities. Small entities may benefit from the proposed rule because it reduces compliance burden by resolving current regulatory ambiguities. For example, the proposed rule makes clear that creditors need not reissue Loan Estimates unless and until the costs that are subject to the ten percent tolerance standard increase based on valid changes in circumstance by more than ten percent in total. The proposed rule also revises the rule and provides more guidance to facilitate use of average cost pricing and reconciles certain inconsistences between RESPA and TILA terminology. The proposed 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 proposed rule reduces unnecessary redisclosure of the RESPA content currently provided on the GFE, the rule would decrease costs to creditors, although the extent to which the proposed 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 not aware 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 if the rules are clarified. As discussed in part VII.F, above, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue. 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 confusing over when redisclosure is permitted or required, and thereby reducing the need for legal advice.

Costs to Small Entities. The Bureau understands that small entities may experience increased costs as a result of the proposal to apply the zero tolerance category to a larger range of charges. Since the proposed rule would expand the circumstances in which creditors could not pass increased costs to consumers when the initial estimate is lower than the actual costs but there is not a legitimate change in circumstances or other exception, creditors may be required to absorb more costs. 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. As discussed above, however, even in circumstances where settlement costs increase substantially and the creditor is unable to pass those charges on to the consumer, the difference between a ten percent tolerance and a zero tolerance will be limited.

The Bureau also understands that the proposed 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 have argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs. The Bureau is unaware of any evidence to suggest that costs are likely to increase in this way. Alternatively, the proposed rule may encourage creditors to allow consumers to choose settlement service providers that are not on a list provided to the consumer (although in this case the creditor would be required to provide consumers with a list of settlement service providers that the consumers could use, if they so choose), 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.

v. Provision of Closing Disclosure

The proposed rule requires delivery of the integrated Closing Disclosure three business days before consummation in all cases. However, the Bureau is proposing two alternative approaches for assigning responsibility for providing the integrated Closing Disclosure to the consumer. Alternative 1 places sole responsibility for provision of the Closing Disclosure on the creditor, while Alternative 2 makes the creditor and settlement agent jointly responsible for providing the Closing Disclosure.

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 part VI above, section-by-section analysis for proposed § 1026.19(f), 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 is provided to the consumer at or before settlement. 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 proposed rule would require delivery of the integrated Closing Disclosure three business days before closing in all circumstances. However, to prevent unnecessary closing delays, the proposed rule would permit limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. In addition, reissuance of the Closing Disclosure and an additional three-business day waiting period would not be required if, during the three business days after issuance of the Closing Disclosure, the amount needed to close shown on the Closing Disclosure increases by $100 or less.

Costs to Small Entities. The proposal to require 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 would have incentives to complete closings as scheduled, and therefore the Bureau believes that they would adjust their business practices such that the Closing Disclosure could be provided in a timely manner and closing problems would 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 proposed rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

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 TILA disclosures 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 Bureau is proposing two alternative approaches for assigning responsibility for provision of the integrated Closing Disclosure to consumers. Under Alternative 1, the creditor would be solely responsible for delivering the Closing Disclosure to the consumer. Under Alternative 2, the creditor and settlement agent would be jointly responsible for providing the consumer with an integrated Closing Disclosure three business days before closing.

Benefits to Small Entities. Because the difference between Alternatives 1 and 2 is about which party would be responsible for providing a disclosure, the relative benefits of each proposal to different small entities are likely to consist of avoided costs. The most useful way to consider these alternatives, therefore, is to consider their respective costs.

Costs to Small Entities—Alternative 1. Alternative 1 would likely place increased costs on creditors, including small creditors. As discussed above, RESPA and current Regulation X require that the person conducting the settlement provide the RESPA-required disclosures to consumers at or before consummation. Since, under Alternative 1, the creditor would be responsible for provision of both the TILA and RESPA content to the consumer, the creditor would incur additional logistical burden and legal risk.[226] Small creditors and settlement agents may incur one-time legal fees under Alternative 1, since those entities may need to contractually stipulate their respective duties or amend existing contractual arrangements in light of the rule. Small creditors may also need to hire additional staff to handle the increased workload associated with collecting the settlement costs and coordinating with the settlement agents and third party service providers and preparing the disclosures. Since the current regulatory scheme of split responsibility, as well as the different roles of creditors and settlement agents in the transaction, already requires a great deal of coordination, it is not clear that giving the creditor sole responsibility for providing the disclosures would impose much additional burden. As a general matter, shifting responsibility for delivery of final RESPA disclosures from settlement agents to creditors may change the role of settlement agents, though the exact impact of such a rule is unclear. Settlement agents play a unique role in working through local real estate transaction requirements and practices, which creditors may be unlikely to take on.

Costs to Small Entities—Alternative 2. The costs to creditors and to settlement agents under the proposed alternative that gives joint responsibility for provision of the Closing Disclosure to creditors and settlement agents would depend on how creditors and settlement agents go about fulfilling the joint requirement. Joint provision would likely require coordination on the part of creditors and settlement agents similar to what is done today. One additional cost, however, may entail re-working that coordination to adjust to the new forms and timing requirement (discussed above).

vi. Expanded Definition of Finance Charge

The proposed rule expands the definition of the finance charge for closed-end transactions secured by real property or a dwelling, consistent with the Board's 2009 Closed-End Proposal.

As discussed more fully in part VI above, section-by-section analysis for proposed § 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 for consumers 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.

The Bureau recognizes that the proposed more inclusive finance charge could affect coverage under other laws, such as such as higher-priced mortgage loan and HOEPA protections, and that a more inclusive finance charge has implications for the HOEPA, Escrows, Appraisals, and Ability to Repay rulemakings identified in part II.F above. Absent further action by the Bureau, the more inclusive finance charge would:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans.[227] The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge would affect both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under Dodd-Frank will depend on comparisons to APOR) for defining what constitutes a high-cost loan.
- Cause more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien higher-priced mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Cause more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals for ''higher-risk'' mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduce the number of loans that would otherwise be ''qualified mortgages'' under the Dodd-Frank Act Ability to Repay requirements, given that qualified mortgages cannot have points and fees in excess of three percent of the loan amount. Also, more loans could be required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and could be ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed-rate, non-higher-priced qualified mortgage loans.[228] Again, status as a higher-

[226] As described in part VII, above, two major vendors currently provide software services to the vast majority of small mortgage originators to produce the RESPA GFE and initial TILA disclosures. RESPA settlement statements are currently issued by settlement agents using software provided a different, but similarly small, set of vendors; however, the Bureau understands that the originators' systems are capable of producing the RESPA settlement statements. As a result, the Bureau believes that it is reasonable to measure costs assuming that the originators' vendors will provide both the Loan Estimate and the Closing Disclosure to their clients under existing contracts. Were the current software providers for settlement agents to have to update their systems (under the second alternative or under other contractual arrangements), those vendors would have to incur the stated costs.

[227] See part VII.D.7 above, for a detailed description of the potential effects of an expanded finance charge on the HOEPA rulemaking.

[228] Specifically, the Dodd-Frank Act generally prohibits prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed-rate qualified mortgages that are not higher-priced mortgage loans. For balloon loans, the Dodd-Frank Act generally requires creditors to assess

Continued

priced mortgage loan depends on comparing APR to APOR.

As discussed above in part VI, section-by-section analysis for proposed § 1026.4 and in part VII, the Bureau is seeking data to model the impact of the more expansive definition of finance charge on coverage of each of these regulatory regimes or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels.[229] The Bureau is working to obtain such data prior to issuing a final rule and is seeking 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.

The Board previously proposed to address these effects by adopting an adjusted points and fees definition and a new metric for determining coverage under APR thresholds, known as the ''transaction coverage rate'' (TCR). The TCR would be based on a modified prepaid finance charge that would include only finance charges retained by the creditor, mortgage broker, or their affiliates, and would therefore more closely approximate existing coverage levels than a more inclusive finance charge. *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).[230] The Bureau has incorporated these measures into its 2012 HOEPA Proposal, and is seeking comment both in that proposal and this rulemaking on additional trigger modifications that could approximate coverage levels under the existing definition of finance charge, such as adjusting the numeric percentage point triggers for APR under HOEPA or other regimes.

If the adjusted points and fees definition, the TCR, or other trigger modifications were adopted in the other rules, the more inclusive finance charge definition would have little or no effect on coverage under those rules although there might still be effects from the expanded definition of finance charge on the coverage of various State mortgage laws and regulations. In addition, because the TCR excludes fees to unaffiliated third parties, the TCR might result in some loans not triggering one or more of the regulatory regimes discussed above that would qualify under an APR threshold using the current definition of finance charge.[231] The discussion of the costs and benefits of a more inclusive definition of finance charge, below, assumes that the Bureau does not adopt the adjusted points and fees definition, the TCR, or other methods of addressing the impact of a more inclusive approach to the finance charge in the other rulemakings. If the Bureau does adopt those measures, the effects of the proposed definition of finance charge would be muted. For instance, the benefits of a simpler APR calculation may be lessened if creditors are required to use different metrics for purposes of disclosure and for determining coverage under various regulatory regimes, although as discussed below with regard to transaction coverage rate both metrics would be easier to calculate than APR using the existing definition of finance charge. In addition, the effects (both benefits and costs) through expanded coverage of those other rules would be eliminated or (in the case of TCR) somewhat reduced.

Benefits to Small Entities

The proposed rule may benefit small entities by easing regulatory burden and litigation risk associated with the current complex rules for determining which fees are part of the finance charge. Because the current rules for determining which fees are part of the finance charge are complicated and unclear, creditors will benefit from a simpler, more inclusive definition. In particular, feedback received by the Bureau and comments on a similar proposal issued by the Board in the 2009 indicate that, because a failure to calculate the finance charge and the APR accurately gives rise to the right of rescission, creditors incur substantial compliance costs attempting to make accurate calculations and incur substantial litigation costs defending against claims of inaccurate calculations.

Costs to Small Entities

To comply with the proposed rule, small entities may be required to update compliance systems to reflect changes to the finance charge calculation. These updates may involve one-time costs associated with software updates, legal expenses, and personnel training time. As discussed above, if the Bureau adopts the proposal, it expects to provide an implementation period that would coincide either with implementation of the disclosure modifications or with implementation of certain changes to coverage of HOEPA and other regulatory regimes that would be affected by the change in definition. Accordingly, the Bureau believes that software changes and other expenses would be incurred as part of the overall software and compliance system revisions required to comply with the other simultaneous changes, and therefore would not impose a substantial additional burden.

As discussed above, the proposed rule if it were implemented without modifications to the triggers for various regulatory regimes might cause more loans to cross Federal and State high cost or high priced loan thresholds based on APR or points and fees. With respect to the HOEPA and Appraisals rulemakings, creditors may incur costs associated with generating and providing HOEPA and appraisal disclosures for additional loans. Creditors may incur additional costs in the context of the Appraisals

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. Only consumers with substantial income or assets would likely qualify for such a loan. A separate Dodd-Frank Act provision authorizing balloon loans made by creditors that operate predominantly in rural or underserved areas is not affected by the finance charge issue.

[229] In its 2009 proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains 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 are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded, and that the share of first-lien loans in the range of typical home purchases or refinancings ($175,000 to $225,000) that qualified as higher-priced mortgage loans would increase by 3 percent. The Board also looked at the impact on two states and the District of Columbia because their anti-predatory lending laws had triggers below the level of the historical HOEPA APR threshold, which is benchmarked to U.S. Treasury securities. The Board concluded that the percentage of first-lien loans subject to those laws would increase by 2.5 percent in the District of Columbia and 4.0 percent in Illinois, but would not increase in Maryland. The Bureau is considering the 2010 version of the Bankrate.com survey, but as described in this notice, the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

[230] The wording of the Board's proposed definition of ''transaction coverage rate'' 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 proposes to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates.

[231] As discussed above in part VI, section-by-section analysis for proposed § 1026.4, the Bureau believes that the margin of differences between the TCR and current APR is significantly smaller than the margin between the current APR and the APR calculated using the expanded finance charge definition because relatively few third-party fees would be excluded by the TCR that are not already excluded under current rules. The Bureau is considering ways to supplement the data analysis described above to better assess this issue, and seeks comment and data regarding the potential impacts of the TCR relative to APR calculated using the current and proposed definitions of finance charge.

rulemaking because the Dodd-Frank Act prohibits creditors from charging consumers for second appraisals conducted in connection with certain properties that have been sold in the last 180 days. Similarly, in the context of the Escrows rulemaking, creditors may incur costs associated with maintaining escrow accounts on more transactions if not subject to other exceptions provided by the Dodd-Frank Act. With respect to the Ability to Repay rulemaking, creditors may incur costs associated with making fewer loans with prepayment penalties, or may incur costs from the additional underwriting requirements and/or liability associated with making more loans that are higher-priced balloon loans or that are not qualified mortgages.

In addition, a small number of creditors may also lose a very small fraction of revenue if they are reluctant to make high-cost, higher-priced, or higher-risk mortgage loans and cannot offer alternatives that are as profitable as those loans.

As discussed in more detail in the 2012 HOEPA Proposal, modifying the triggers would require some one-time implementation costs and would create some additional compliance complexity if creditors must use different metrics for disclosure purposes and for determining coverage under particular regulatory regimes. However, with regard to the transaction coverage rate, the Bureau believes that such impacts would be addressed by the fact that both TCR and APR using the expanded definition of finance charge would be easier to calculate than APR under the current definition. On balance, the Bureau believes adoption of the proposed trigger modifications would reduce the economic impacts on small entities of the more expansive definition of finance charge.

vii. Implementation of New Disclosures Mandated by the Dodd-Frank Act

The proposed rule exempts creditors temporarily from compliance with certain new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act until the TILA–RESPA rule takes effect.

As discussed more fully in part V.B, above, title XIV of the Dodd-Frank Act adds new disclosure requirements to TILA and RESPA for 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 believes these disclosures should be included in the integrated forms because doing so would 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 would 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 delayed implementation of the new disclosure requirements, although, as noted above, small entities may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect.

viii. Costs Associated with Reviewing the Regulation

Small entities will need to learn about the requirements of the regulation and determine what changes to their business practices they would be required to make to come into compliance. These costs will vary considerably across institutions, depending on the size and complexity of their operations. In addition, some firms will rely on their own staff to conduct this analysis, while others will rely on outside counsel, industry sources, or compliance firms. Firms that use compliance systems provided by outside vendors, especially smaller creditors, will likely rely in large part on those vendors to determine what changes they need to make, reducing the burden on those creditors.

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 recordkeeping and compliance requirements of the proposed rule are the same classes of 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 will be required for recordkeeping and other compliance requirements of this proposed rule that are not otherwise required in the ordinary course of business of the small entities affected by the proposed rule. Part VIII.B.4.b and 4.c summarize the recordkeeping and compliance requirements of the proposed rule that would affect small entities.

With regard to the proposed recordkeeping requirements, the SERs reported that they generally use vendor-supplied computer systems to prepare the TILA and RESPA disclosures and retain scanned images of those disclosures electronically, but they do not retain those records in a machine readable format.[232] As discussed above, however, the Bureau believes that vendors will update their software and provide small creditors with the ability to retain the required data. The one situation in which a small entity would require professional skills that are not otherwise required in the ordinary course of business would be if a small creditor does not use computerized systems to store loan information and therefore will either need to hire staff with the ability to implement a machine-readable data retention system or contract with one of the vendors that provides this service.

With regard to the proposed compliance requirements, as discussed above, the Bureau understands that, based on feedback from the SERs, the small entities that will be affected by the proposed 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, maintaining recordkeeping systems that store documents electronically (but not necessarily in a machine readable format), and maintaining systems to calculate the APR. The major elements of the proposed 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 proposed 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.[233] 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

[232] *See* Small Business Review Panel Report at 25.

[233] *See id.* at 18.

vendors for upgrades. 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 would be reinforcing existing professional skills 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 proposed rule, 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 additional staff that small entities may need to hire would generally be of the same professional skill set as current staff. For example, if the Bureau were to adopt the Alternative 1 proposal regarding responsibility for who provides the Closing Disclosure (i.e. making creditors responsible), small creditors may need to hire additional staff to handle the increased work load resulting from the reallocation of existing responsibilities between creditors and settlement agents. As a more general matter, to the extent the proposed 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 will be counterbalanced by the regulatory streamlining and clearer guidance provided by the proposed rule.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules which May Duplicate, Overlap, or Conflict with the Proposed Rule.

The proposed rule is intended to consolidate the overlapping and, in some cases, duplicative mortgage disclosure regulations under TILA and RESPA into a single set of requirements and to resolve conflicts between the two. The Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposed rule.

However, the Bureau is currently developing other proposed or final rules required by title XIV of the Dodd-Frank Act, including rules addressing ability-to-pay standards for qualified mortgages, mortgage loan originator compensation, mortgage loans subject to HOEPA, mortgage servicing, and appraisal practices. As discussed above, the Bureau is aware of concerns that aspects of the proposed rule could affect the Bureau's rulemakings concerning HOEPA, Escrows, Appraisals, and Ability-to-Repay. In particular, some SERs expressed concern that an unintended consequence of a more inclusive approach to the finance charge could be that more loans would qualify as high-cost loans subject to additional requirements under HOEPA or similar State statutes that use the finance charge or the APR as a trigger.[234] As a result, the SERs generally requested that the Bureau adjust these thresholds, to the extent possible, to account for the more inclusive finance charge. In response to this feedback, the Panel recommended in the Small Business Review Panel Report that, before issuing a final rule, the Bureau consider the impact of the more inclusive finance charge on its other rulemakings, and that it adopt any alternatives or adjustments in the final rule or the Bureau's other rulemakings that would reduce burden on small entities while still accomplishing the goals of the more inclusive finance charge.

Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau has considered the requirements of TILA section 129 (high-cost mortgages) and TILA section 129C (qualified mortgages), including the Dodd-Frank Act amendments to those provisions, as well as State predatory lending laws, in proposing the amendments to § 1026.4. For example, the Board previously proposed two means of reconciling an expanded definition of the finance charge with existing thresholds for loan APR and points and fees. The Bureau believes that it is helpful to analyze any threshold adjustments on a rule-by-rule basis, so in addition to seeking general comment in this rulemaking it has incorporated these adjustments into its 2012 HOEPA Proposal and is seeking comment on additional adjustments that could approximate coverage levels under the existing definition of finance charge, such as adjusting the numeric percentage point triggers for APR under HOEPA.

The Bureau will consider any final or proposed rules implementing the regulatory regimes that rely on APR and points and fees triggers prior to issuing a final rule on definition of finance charge. As discussed above, the Bureau believes that it would be preferable to make any change to the definition of finance charge and any related adjustments in regulatory triggers take effect at the same time, in order to provide for consistency and efficient systems modification, and is seeking comment on the best sequencing for implementation periods in light of the related rulemakings.

In addition, title XIV of the Dodd-Frank Act amends TILA and RESPA to add new disclosures that must be provided in the Loan Estimate or Closing Disclosure (*e.g.,* disclosure of escrow payment amounts and aggregate settlement charges). In addition, title XIV adds other new mortgage disclosure requirements (*e.g.,* warnings regarding negative amortization and State anti-deficiency laws). Although the Dodd-Frank Act does not specifically mandate inclusion of these new disclosures in the Loan Estimate and Closing Disclosure, the Bureau is proposing that, to avoid duplication, overlaps, and conflicts, these new disclosures be included in the integrated forms. See part V.B above for further discussion.

6. Description of Any Significant Alternatives to the Proposed Rule which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities.

a. Initial and Final Disclosures

As noted above, under the proposed rule, the Loan Estimate would be provided to consumers within three business days after application and replace the early TILA disclosure and RESPA GFE, and the Closing Disclosure would be provided to consumers at least three business days prior to the closing of the loan transaction and replace the final TILA disclosure and RESPA settlement statement. In the Small Business Review Panel Report, the Panel made a number of recommendations regarding the Loan Estimate and Closing Disclosure that could potentially reduce the impact of the proposed rule on small entities, while accomplishing the stated objectives of applicable statutes.

i. Prototype Forms

As discussed in the Small Business Review Panel Report, on the whole, the

[234] The Bureau acknowledged this possible effect in the Small Business Review Panel Outline.

SERs strongly preferred the Bureau's prototype integrated disclosure forms to the current TILA and RESPA disclosure forms, but expressed concerns about the one-time costs and ongoing costs associated with generating the prototype integrated forms. In particular, the SERs anticipated significant one-time software upgrade and training costs, though their estimates varied greatly. (These costs are described in greater detail in part VIII.B.4.c.i, above.) SERs generally stated that these costs would be less burdensome if the Bureau provided a substantial compliance period to upgrade systems and to train staff, but SERs requested a variety of periods. The Panel recommended that the Bureau provide a compliance period that permits sufficient time for small entities to make necessary system upgrades and provide training, and that the Bureau solicit public comment on the amount of time needed for such upgrades and training.

In part V.A, above, the Bureau discusses the mandatory compliance period for the proposed rule and notes that, although Bureau wishes to make the rule effective as soon as possible because it will provide important benefits to consumers, the Bureau understands that the final rule will require lenders, mortgage brokers, and, under Alternative 2 regarding provision of the Closing Disclosure, settlement agents to make extensive revisions to their software and to retrain their staff. The Bureau is seeking comment on how much time industry needs to make these changes, and specifically requests 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, with respect to small entities, the Bureau is following the Panel's recommendation and soliciting comment on whether small entities affected by the rule should have additional time to comply with the final rule.

ii. Testing

As discussed in the Small Business Review Panel Report, the SERs suggested that the prototype forms could be further improved through testing on actual loan transactions. The Panel recognized that the Bureau has developed the prototype forms through qualitative, one-on-one testing with consumers, lenders, mortgage brokers, and settlement agents and that the Bureau has solicited extensive public feedback on the prototype forms through its Web site, but recommended that the Bureau explore the feasibility of conducting such testing before issuing a final rule. Based on this recommendation, the Bureau plans to explore the feasibility of conducting such testing before issuing a final rule.

iii. Clear Guidance

As discussed in the Small Business Review Panel Report, the Bureau indicated in the Small Business Review Panel Outline that it was considering proposing to require the use of standard forms for mortgage loan transactions that are subject to RESPA and to promulgate model forms for TILA-only transactions, and sought feedback from the SERs regarding their preference for promulgation of standard or model disclosure forms. Moreover, the Bureau indicated that it was considering providing additional guidance regarding compliance with the regulations affecting mortgage disclosures. On both issues, however, the Bureau sought feedback from SERs. As discussed in the Small Business Review Panel Report, the SERs generally stated a preference for standard forms and clearer guidance. In response to this feedback, the Panel recommended that the Bureau provide more detailed guidance on how to complete the integrated forms (including, as appropriate, samples of completed forms for a variety of loan transactions) and that the Bureau consider whether mandating use of the integrated forms would result in more consistent disclosures for consumers while also easing the compliance burden on small entities. The Panel also recommended that, in the proposed rule, the Bureau solicit public comment on mandating use of the integrated forms. As discussed above, the Bureau is proposing to require the use of standard forms for mortgage loan transactions that are subject to RESPA, but for transactions that are subject only to TILA, the forms would be models, consistent with the provisions of that statute.

iv. Total Interest Percentage and Average Cost of Funds

As discussed in the Small Business Review Panel Report, the SERs expressed concerns that the total interest percentage and average cost of funds disclosures required under the Dodd-Frank Act would be difficult to calculate, difficult to explain to consumers, and likely not helpful to consumers.[235] The Panel recognized that these disclosures are required by the Dodd-Frank Act, but recommended that the Bureau consider revisions to these disclosures that would minimize the burden on small entities while still ensuring that consumers receive important information about mortgage transactions. The Panel also recommended that the Bureau solicit comment on whether these disclosures would be helpful to consumers and the costs, if any, these disclosures would impose on small entities. The prototype disclosure forms appended to the proposed rule include the total interest percentage and average cost of funds disclosures. However, following the Panel's recommendation, the Bureau is alternatively proposing to exempt transactions subject to this proposal from disclosing the total interest percentage disclosure and the lender cost of funds, as discussed in part VI above, section-by-section analysis for proposed §§ 1026.37(l)(3) and 1026.38(o)(5) and (6).

v. Use of Line Numbers

As discussed in the Small Business Review Panel Report, several SERs stated that removing the current RESPA settlement statement line numbers from the integrated Closing Disclosure would significantly increase the cost of software upgrades. The Panel recognized that the prototype Closing Disclosure was developed through consumer testing to enable consumers to compare the final costs to those provided in the Loan Estimate and that the proposed form of the Closing Disclosure would necessitate reordering and relabeling of many of the line numbers on the current disclosures (*e.g.,* due to the proposed revisions being considered to the tolerance rules). The Panel recommended that the Bureau solicit comment on whether an alternative design or numbering format (including incorporating the current RESPA settlement statement line numbers to the extent consistent with the proposals) would impose a lower amount of software-related costs on lenders, mortgage brokers, mortgage companies, and settlement agents while enabling consumers to compare loan terms to the same extent as the current prototype forms. Following the Panel's recommendation, the Bureau is soliciting comment on these issues in part VI above, section-by-section analysis for proposed § 1026.37(f).

vi. Optional Signature Line

As discussed in the Small Business Review Panel Report, page five of the prototype Closing Disclosure includes a signature block for the consumer to

[235] However, as the Small Business Review Panel Report notes on page 28, the SERs did not provide specific estimates of the costs to calculate these amounts or to explain these amounts to consumers, nor did they provide evidence to support the claim that this information would be unhelpful to consumers.

acknowledge receipt of the Closing Disclosure. Some SERs were concerned that consumers might be confused about the effect of signing to acknowledge receipt of the Closing Disclosure. In response to these concerns, the Panel recommended that the Bureau consider whether the language on the prototype forms should be revised, or whether additional guidance should be provided to clarify the effect of a signature on the consumer's legal obligations. Following the Panel's recommendation, the Bureau is soliciting comment on such issues in part VI above, section-by-section analysis for proposed § 1026.38(s).

b. Definition of Loan Application

As discussed in the Small Business Review Panel Report, the Bureau has considered eliminating the seventh element of the application definition and replacing it with additional items that would, along with the six specific items in the current definition that the Bureau proposes to retain, enable the creditor or mortgage broker to provide a reasonably accurate Loan Estimate. The Panel recognized that the SERs disagreed about whether the seventh item in the application definition was necessary to provide a reasonably accurate Loan Estimate, and there was a lack of consensus among the SERs who opposed elimination of the seventh item about what additional information would be needed. Following the Panel's recommendation, the Bureau is soliciting public comment in part VI above, section-by-section analysis for the proposed § 1026.2(a)(3) on what, if any, additional specific information beyond the six specific items included under the proposed definition of application is needed to provide a reasonably accurate Loan Estimate.

c. Changes in Settlement Costs; Redisclosure

As discussed in the Small Business Review Panel Report, the Bureau indicated in the Small Business Review Panel Outline that it has considered preserving HUD's 2008 RESPA Final Rule in its entirety. However, as mentioned in such materials and as discussed further in part VI above, section-by-section analysis for proposed § 1026.19(e), above, the Bureau believes that the current rules can likely be improved by requiring creditors to provide consumers with more accurate estimates of settlement charges and reducing compliance burden for industry.

As discussed in the Small Business Review Panel Report, the SERs generally expressed concern about the potential unintended consequences of applying the proposed zero percent tolerance standard (instead of the current ten percent tolerance) to affiliate fees and fees charged by creditor-selected providers. However, the SERs generally supported additional clarifications and guidance regarding the current tolerance rules. In response to this feedback, the Panel recommended that the Bureau consider alternatives to expanding application of the zero percent tolerance that would increase the reliability of cost estimates while minimizing the impacts on small entities. The Panel also recommended that the Bureau solicit comment on 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 has adopted these recommendations in the proposed rule. See part VI, section-by-section analysis for proposed § 1026.19(e).

As discussed in the Small Business Review Panel Report, the Bureau also considered 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. Such an approach, if adopted, would have likely reduced the ability of creditors, including small entity creditors, to pass on changes in settlement costs to consumers and, accordingly, increased the extent to which creditors bore the associated risk. However, the Bureau chose not to incorporate this approach into the proposal because of its concern that it could prevent creditors from increasing settlement charges to reflect justifiable increases in costs.

d. Provision of the Closing Disclosure

As discussed in the Small Business Review Panel Report, the Bureau has also considered requiring provision of the Closing Disclosure three business days before closing only when, after the Loan Estimate is given, the APR in the Loan Estimate increases by more than one-eighth of one percent or an adjustable-rate feature is added to the loan. In all other circumstances, the Closing Disclosure would have been provided at or before consummation. However, the Bureau is concerned that this approach would allow significant increases in the cash needed to close without sufficient notice to the consumer.

In addition, the Bureau has considered expanding the current rules allowing consumers to waive the three-business-day waiting period in cases of bona fide personal financial emergency. However, the Bureau is concerned that such an expansion would enable creditors to pressure consumers into waiving the waiting period because consumers may be unwilling or unable to challenge a cost increase that occurs shortly before consummation.

As noted in the Small Business Review Panel Report, the SERs generally opposed requiring provision of the integrated Closing Disclosure three business days before consummation. The Panel acknowledged this feedback, but recognized that statutory requirements limit the discretion of the Bureau to shorten the three-business-day waiting period. Therefore, the Panel recommended that the Bureau continue to explore whether the potential impact of the three-business-day requirement on small entities can be mitigated while maintaining the benefits to consumers by, for example, permitting limited changes after provision of the Closing Disclosure. Following the Panel's recommendation, the Bureau has included in proposed § 1026.19(f)(2) a list of permitted changes after provision of the Closing Disclosure.

Regarding which party is responsible for providing the Closing Disclosure to the consumer, the Bureau has also considered making the settlement agent solely responsible for this task. However, the Bureau understands that settlement agents may not have access to much of the information regarding loan terms that must be disclosed in the Closing Disclosure.

e. Recordkeeping and Data Collection

The issues regarding the Bureau's proposed record retention requirements and the alternatives the Bureau has considered (*i.e.,* a small entity exemption) are discussed in part VIII.B.4.b, above.

f. Annual Percentage Rate

As discussed in the Small Business Review Panel Report, most lender SERs supported the more-inclusive definition of finance charge, but some expressed concern about including taxes and insurance that are required to be paid to an escrow account in the finance charge. In response to this feedback, the Panel recommended that the Bureau consider excluding escrowed taxes and insurance from the more inclusive finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. The Bureau has proposed a revised definition of finance charge in § 1026.4 that incorporates the Panel's recommendation.

Moreover, the Panel recommended that, before issuing a final rule to integrate the TILA and RESPA mortgage disclosure requirements, the Bureau consider the impact of the more inclusive finance charge on its other rulemakings, and that it adopt any alternatives or adjustments in the final TILA–RESPA rule or the Bureau's other rulemakings that would reduce burden on small entities while still accomplishing the goals of the more inclusive finance charge. As discussed above in part II.F, in the section-by-section analysis for proposed § 1026.4 in part VI, and in part VIII.B.5, the Bureau has carefully considered alternatives that would mitigate the impact of the more inclusive finance charge on all entities subject to the proposed rule, including small entities. Addition discussion will be provided in other proposed and final rules issues by the Bureau. Furthermore, the Bureau will carefully consider the comments received on this issue and perform further analysis prior to issuing a final rule.

7. Discussion of Impact on 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.[236] 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.[237]

At the time the Bureau circulated the Small Business Review Panel Outline to the SERs in advance of the 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 to only 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.[238]

At the Panel Outreach Meeting, the Bureau asked the SERs a series of questions regarding cost of business credit issues.[239] 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 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 themselves 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 lender 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,[240] and therefore would not be subject to the proposed rule.

The Bureau recognizes that some mortgages, especially second lien mortgages or cash-out refinancings, may be used in part or in whole to finance small businesses, without the knowledge of the creditor. Based on the overall impact of the proposal, however, the Bureau does not believe that the proposal would lead to an increase in the cost of mortgage lending. As discussed above in part VII, the Bureau estimates that the most burdensome aspect of the proposal, the systems revision required to provide the new Loan Estimate and Closing Disclosure, would lead to a one-time cost that, on an annualized basis, is equivalent to less than $3 dollars per mortgage origination. The proposal, therefore would not lead to an increase in the cost of credit to small businesses even if small businesses were to use closed-end mortgages credit for financing.

As discussed in the Small Business Review Panel Report, the Bureau considered various alternatives regarding the regulatory definition of application, permissible changes in settlement costs, timing and provision of the Closing Disclosure, and recordkeeping requirements, and consulted with the Small Business Review Panel on those alternatives. See Small Business Review Panel Report at 9–12. For example, the Bureau considered an exemption for small entities from the electronic data recordkeeping requirements in proposed § 1026.25. *Id.* at 12. The Bureau consulted on alternatives that would achieve the statutory objectives while minimizing the cost of credit for small entities.

IX. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking, and identified as such, will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, this information collection unless the information collection displays a currently valid control number.

This proposed rule would amend 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. As described below, the proposed rule would amend the collections of information currently in Regulation X and Regulation Z. As previously discussed, the Dodd-Frank Act amended TILA and RESPA 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. Dodd-Frank Act sections 1098, 1100A. The Dodd-Frank Act requires the Bureau to publish proposed rules and forms combining the disclosures by July 21, 2012. Dodd-Frank Act section 1032(f). The Dodd-Frank Act also made

[236] *See* 5 U.S.C. 603(d)(2)(A). The Bureau provided this notification as part of the 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.

[237] *See* 5 U.S.C. 603(d)(2)(B).

[238] *See* TILA section 104(1); RESPA section 7(a)(1).

[239] *See* the Small Business Review Panel Report at appendix D, 154–155 (PowerPoint slides from the Panel Outreach Meeting, ''Topic 7: Impact on the Cost of Business Credit'').

[240] *See* TILA section 104(1); RESPA section 7(a)(1).

several amendments to the disclosure requirements in TILA and RESPA. Based on the specific statutory mandate to combine the disclosures under TILA and RESPA, the Bureau is proposing to amend 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 proposed rule requires 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 provided to consumers at least three business days prior to consummation to replace the final TILA disclosure and RESPA settlement statement. The proposed rule also contains new electronic recordkeeping requirements.

The information collection in the proposed rule is required to provide benefits for consumers and would be mandatory. *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 proposed rule, no issue of confidentiality arises. The likely respondents would be commercial banks/savings institutions, credit unions, mortgage companies (non-bank lenders), mortgage brokers, and settlement agents [241] that would be required under the proposed amendments to Regulations Z and X, to provide to consumers, and maintain related electronic records on, the integrated TILA–RESPA mortgage disclosures, either because they make mortgage loans subject to the proposed rule or because they may be responsible for completing or providing required disclosures.[242]

Under the proposed rule, the Bureau would account for the entire paperwork burden for respondents under Regulation X. The Bureau generally would also account for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement 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 proposed rule is allocated to Regulation Z. As discussed in part IX.B.2, below, under the proposed rule there would be 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 would be eliminated for all of the mortgage market, other than reverse mortgages, and replaced by the Loan Estimate and Closing Disclosures, under Regulation Z. Using the Bureau's burden estimation methodology, the total estimated burden for the approximately 14,354 banks, savings institutions, credit unions, and mortgage companies subject to the proposed rule,[243] including Bureau respondents, would be approximately 2.12 million hours for one-time changes and 2.35 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 proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

A. Information Collection Requirements

The Bureau believes the following aspects of the proposed rule would be information collection requirements under the PRA: (1) The development, implementation, and continuing use of new, integrated Loan Estimate and Closing Disclosure forms required for closed-end mortgage transactions subject to the proposed rule and 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,[244] and (2) the imposition of new requirements to maintain evidence of compliance in standardized, machine readable, electronic format.[245]

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 proposal, responsibility for delivering the Loan Estimate would lie 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 brokers, and the estimates presented here are based on the assumption that the creditor delivers the Loan Estimate. Similarly, the Bureau is proposing two alternatives with respect to the responsibility to deliver the Closing Disclosure. Under the first alternative, the creditor would be solely responsible for delivering the Closing Disclosure; under the second alternative, the creditor and settlement agent would be jointly responsible. These estimates assume that the creditor takes on the obligation to deliver the Closing Disclosure. The Bureau believes

[241] 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 brokers and settlement agents.

[242] For purposes of this PRA analysis, references to ''creditors'' or ''lenders'' shall be deemed to 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.

[243] For the reasons described above, this figure excludes mortgage brokers and settlement agents.

[244] The proposal 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 part 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 proposed rule is included in the burden calculation for the Loan Estimate.

[245] Under the proposal, these information collections apply to closed-end transactions secured by real property, other than reverse mortgages subject to § 1026.33. As discussed in part VI, section-by-section analysis for § 1026.19, above, construction-only loans, vacant-land loans, and loans secured by more than 25 acres, are subject to the integrated disclosure provisions 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. However, the Bureau believes that the number of such transactions is negligible as compared to the entire mortgage market.

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 would incur one-time costs associated with training and reviewing the regulation. In addition, covered persons who maintain their own software and compliance systems would incur one-time costs to adapt their software and compliance systems to produce the new forms.[246] 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 that the top 20 creditors typically maintain their own systems, while 95 percent of smaller creditors rely on vendors.

The use of vendors would 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 a leading mortgage origination technology provider, the Bureau believes that these updates, however, would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors. Based on 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 comply with the proposal. Larger creditors with proprietary systems would need to revise their compliance software and systems. Based on information from conversations with large creditors and with software vendors, the Bureau estimates that the cost per creditor for this category of creditor would be $1,000,000.

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 two 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, one attorney and one compliance officer would each take seven hours to read and review the sections of the proposed regulation that describe the contents of the Loan Estimate and Closing Disclosure requirements, based on the length of each of the sections.

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 $30.9 million, which corresponds to approximately 574,600 hours. Annualized over five years, this is an annual cost of $6.2 million. The Bureau estimates the one-time costs to the 128 depository institutions (including their depository affiliates) that are mortgage originator respondents of the Bureau under Regulation Z[247] would be $20.1 million, or 391,000 hours. For the estimated 2,515 nondepository institutions that are subject to the Bureau's administrative enforcement authority, the Bureau is taking the burden of half of those nondepository institutions for purposes of this PRA analysis.[248] The Bureau estimates the one-time costs would be $10.8 million, or 183,700 hours.[249]

b. Ongoing Costs

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 would 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. However, the Bureau may adjust its calculation in a final rule if it determines that such information is collected in the normal course of business or that automated sources of such data exist that would make any burden associated with collecting that data negligible. 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 $68.4 million per year. This represents an average cost of approximately $15 per origination.[250]

[246] In addition to changing the format of the required forms, the new proposed forms include numerous new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information would 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.

[247] 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.

[248] 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.

[249] For additional information, please see the proposed amended Supporting Statement for OMB Control Number 3170–0016, available at *www.reginfo.gov.*

[250] 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	17,900,000	4,800,000	22,700,000
Annual Burden (hrs):			
Time per response (minutes)	3	6	
Total (hours)	**895,000**	**480,000**	**1,375,000**
Annual Burden ($):			
Labor costs	$41,170,000	$22,080,000	$63,250,000
Production and distribution costs	$7,129,000	$2,280,000	$9,409,000
Total	**$48,299,000**	**$24,360,000**	**$72,659,000**

2. Recordkeeping

The proposed rule imposes new data retention requirements on certain respondents. As discussed above in part VII, the proposed rule will require creditors and mortgage brokers to retain evidence of compliance with the Loan Estimate and Closing Disclosure requirements in machine readable,[251] electronic format. The proposed retention period is three years for the Loan Estimates and five years for the Closing Disclosures. See part VI above, section-by-section analysis for proposed § 1026.25.

The proposed rule may result in costs to covered persons. Under current rules, creditors must retain evidence of compliance with the disclosure requirements in Regulation X (*i.e.,* a copy of the RESPA settlement statement) and Regulation Z (*i.e.,* evidence of compliance generally), but are not required to maintain such evidence an electronic, machine readable format. 12 CFR 1024.10(e); 1026.25. Based on industry feedback, the Bureau understands that firms currently rely on electronic systems for most aspects of the mortgage loan origination process, including electronic record creation and storage. Not all creditors currently maintain data in a machine-readable format, and those who do may not retain it in the format that may ultimately be adopted. To comply with the proposed record retention provisions, therefore, creditors may be required to reconfigure existing document production and retention systems. For creditors that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in a standard machine readable format will impose a substantial burden, as the only requirement will be to output existing data to a new format and then store that data.

The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the new proposed Loan Estimate and Closing Disclosure. The Bureau estimates that creditors that maintain their own compliance systems will need to expend 40 hours of software and IT staff time to develop the capacity to export data from existing data formats to the standard format. As discussed above, the Bureau estimates that 2,643 creditors are its respondents for purposes of the PRA, of which 152 creditors maintain their own compliance systems. At 40 hours each, the one-time burden is an estimated 6,080 hours.

Additionally, for each covered person, the Bureau estimates that one attorney and one compliance officer would each take 7.5 minutes to read and review the portion of the regulation pertaining to data retention, based on the length of that section. Accordingly, the total one-time burden associated with the data retention provision of the proposed rule would be 6,400 hours, or $376,400.

Creditors that rely on vendors would likely rely on vendor software and systems to comply with the data retention requirement; at least one vendor already offers indefinite data storage to customers that use their web-based origination services.

The Bureau understands that requiring standardized, electronic records may be a significant burden for covered persons that do not currently have such electronic filing systems. To reduce the burden on small entities, the Bureau is considering an exemption from the electronic data retention requirements. See part VI above, section-by-section analysis for proposed § 1026.25.

In addition, the proposed 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. This retention requirement may result in additional cost to respondents that are creditors and mortgage brokers.

B. 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 proposal for Bureau respondents under the PRA.

[251] As discussed in part VI, section-by-section analysis for proposed § 1026.25(c), ''machine readable'' means 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, are not machine readable for purposes of this proposal.

Table 3: Regulation Z One-Time and Annual Burdens Impacted by Proposal for Bureau Respondents

	Loan Estimate	Closing Disclosure	Recordkeeping	Total
Number of respondents	2,643	2,643	2,643	2,643
Number of responses	17,900,000	4,800,000	n/a	22,700,000
One-Time Burden				
Labor hours	287,000	287,000	6,400	580,400
Labor cost	$15,442,000	$15,442,000	$376,000	$31,260,000
Annual Burden				
Labor (hrs)	895,000	480,000	n/a	**1,375,000**
Labor cost ($)	$41,170,000	$22,080,000	n/a	**$63,250,000**
Production and distribution costs ($)	$7,129,000	$2,280,000	n/a	**$9,409,000**
Total annual costs ($)	**$48,299,000**	**$24,360,000**	**n/a**	**$72,659,000**

2. Regulation X

The proposal 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.[252] Under the proposal, the majority of this burden would be eliminated, with only reverse mortgage transactions remaining subject to the RESPA GFE and 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 proposal.

Table 4: Regulation X Annual Burdens Impacted by Proposal

	GFE	HUD-1	Total
Number of responses	122,400	72,000	194,400
Annual Burden (hrs):			
Time per response (minutes)	10	35	
Total (hours)	**20,400**	**42,000**	**62,400**
Annual Burden ($):			
Labor costs	$938,400	$1,932,000	$2,870,400

3. Net Effect on PRA Estimates of Ongoing Burden

As discussed above, by integrating the TILA and RESPA disclosures, the proposal 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 proposal.

C. Comments

Comments are specifically requested concerning: (i) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (ii) the accuracy of the estimated burden associated with the proposed collections of information; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer

[252] 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).

for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to *http://oira_submission@omb.eop.gov,* with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov.*

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Mortgage servicing, Mortgages, Recordkeeping requirements, Reporting.

12 CFR Part 1026

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is shown inside bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation X, 12 CFR part 1024, and Regulation Z, 12 CFR part 1026, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES (REGULATION X)

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

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

2. Section 1024.5 is amended by revising paragraph (a), removing and reserving paragraph (b)(1), and adding paragraph (c), to read as follows:

§ 1024.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to **[**all**]** federally related mortgage loans, except ►as◄ **[**for the exemptions**]** provided in paragraph►s◄ (b) ►and (c)◄ of this section.

(b) *Exemptions.* (1) ►[Reserved]◄ **[**A loan on property of 25 acres or more.**]**

* * * * *

►(c) *Partial exemptions for certain mortgage loans.* Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.21(b) and (c) do not apply to a federally related mortgage loan:

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e) and (f); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).◄

3. Appendix A to part 1024 is revised to read as follows:

Appendix A to Part 1024—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD–1 and HUD–1A Statements

The following are instructions for completing the HUD–1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for specific definitions of many of the terms that are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to the Bureau's regulations (Regulation X) regarding rules applicable to reproduction of the HUD–1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD–1 (and for per diem interest, in the 900-series of the HUD–1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD–1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD–1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204–209 on page 1 of the HUD–1, and by a charge to the seller in lines 506–509 on page 1 of the HUD–1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1, with an offsetting credit reported on page 1 of the HUD–1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD–1 but marked ''P.O.C.'' for ''Paid Outside of Closing'' (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as ''P.O.C.'' with the party making the payment identified in parentheses, such as ''P.O.C. (borrower)'' or ''P.O.C. (seller)''.

In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the ''no cost'' provisions must be itemized and listed in the borrower's column on the HUD–1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of

the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of ''place of settlement.''

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. What constitutes personal property varies from State to State. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 12 CFR Part 1024 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement. ►For reverse mortgage transactions, the amount disclosed on Line 202 is the initial principal limit.◄

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Lines 204–209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204–209. Lines 204–209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an ''allowance'' to the Borrower for items that the Borrower is to purchase separately. ►For reverse mortgages, the amount of any initial draw at settlement is disclosed on Line 204.◄

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked ''P.O.C. (Borrower)'', and must not be included in computing totals.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506–509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a ''P.O.C.'' item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record ''Our origination charge,'' which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record ''Your credit or charge (points) for the specific interest rate chosen,'' which states the charge or credit adjustment as applied to ''Our origination charge,'' if applicable. This number must not be listed in either column or shown on page one of the HUD–1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record ''Your adjusted origination charges,'' which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where ''no cost'' includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804–808 may be used to record each of the ''Required services that we select.'' Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing (''P.O.C.''), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901–904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (*e.g.,* FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an ''escrow,'' ''impound,'' or ''trust'' account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc. The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in 12 CFR 1024.17(d). The adjustment will always be a negative number or zero (–0–), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD–1 or HUD–1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100–1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of ''Title services and lender's title insurance.'' This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200–1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total ''Government recording charges,'' and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for State transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

Page 3

Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges

The HUD–1/1–A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD–1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD–1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD–1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD–1. The comparison chart is comprised of three sections: ''Charges That Cannot Increase'', ''Charges That Cannot Increase More Than 10%'', and ''Charges That Can Change''.

''Charges That Cannot Increase''. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD–1/1A must be entered in the corresponding line in the HUD–1/1A column. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD–1/1A, the credit should be entered as a negative number.

''Charges That Cannot Increase More Than 10%''. A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD–1/1A for each line must be entered in the HUD–1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD–1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD–1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

''Charges That Can Change''. The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate lines in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD–1/1A for each charge in this section must be entered in the corresponding line in the HUD–1/1A column, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

Loan Terms

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves. ►For reverse mortgages, the initial monthly amount owed for principal, interest, and any mortgage insurance must read ''N/A'' and the loan term is disclosed as ''N/A'' when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time. Additionally, for reverse mortgages the question ''Even if you make payments on time, can your loan balance rise?'' must be answered as ''Yes'' and the maximum amount disclosed as ''Unknown.''

For reverse mortgages that establish an arrangement for the payment of property taxes, homeowner's insurance, or other recurring charges through draws from the principal limit, the second box in the ''Total monthly amount owed including escrow payments'' section must be checked. The blank following the first $ must be completed with ''0'' and an asterisk, and all items that will be paid using draws from the principal limit, such as for property taxes, must also be indicated. An asterisk must also be placed in this section with the following statement: ''Paid by or through draws from the principal limit.'' Reverse mortgage transactions are not considered to be balloon transactions for the purposes of the loan terms disclosed on page 3 of the HUD–1.◄

Instructions for Completing HUD–1A

Note: The HUD–1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD–1 form may also be used for such transactions, by

utilizing the borrower's side of the HUD–1 and following the relevant parts of the instructions as set forth above. The use of either the HUD–1 or HUD–1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

Background

The HUD–1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD–1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD–1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD–1 in any transaction that has a seller.

Refer to the ''definitions'' section (§ 1024.2) of 12 CFR part 1024 (Regulation X) for specific definitions of terms used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 12 CFR 1024.9 regarding rules for reproduction of the HUD–1A. Additional pages may be attached to the HUD–1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD–1A. The settlement agent shall complete the HUD–1A in accordance with the instructions for the HUD–1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided in section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in section L and the names of the recipients of the loan proceeds in section M should be set forth on the blank lines.

Line-Item Instructions

Page 1

The identification information at the top of the HUD–1A should be completed as follows: The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 12 CFR 1024.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges. This section of the HUD–1A is similar to section L of the HUD–1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for section L in the HUD–1 should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD–1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include section L amounts from additional pages, if any are attached to this HUD–1A.

Section M. Disbursement to Others. This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in section M.

Section N. Net Settlement. Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

Page 2

This section of the HUD–1A is similar to page 3 of the HUD–1. The instructions for page 3 of the HUD–1 should be followed insofar as possible. The HUD–1/1A Column should include any amounts shown on page 1 of the HUD–1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

4. Appendix B to part 1024 is amended by revising paragraph 12 to read as follows:

Appendix B to Part 1024—Illustrations of Requirements of RESPA

* * * * *

12. *Facts.* A is a mortgage broker who 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.

Comment. The mortgage broker's fee must be ►reflected◄ [itemized] in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services. [Also, 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 Good Faith Estimate and listed in the 800 series of the HUD–1 Settlement Statement.]

5. Appendix C to part 1024 is revised to read as follows:

Appendix C to Part 1024—Instructions for Completing Good Faith Estimate (GFE) Form

The following are instructions for completing the GFE required under section 5 of RESPA and 12 CFR 1024.7 of the Bureau regulations. The standardized form set forth in this Appendix is the required GFE form and must be provided exactly as specified; provided, however, preparers may replace HUD's OMB approval number listed on the form with the Bureau's OMB approval number when they reproduce the GFE form. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

General Instructions

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the ''form'' refers to the required

standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

Specific Instructions

Page 1

Top of the Form—The loan originator must enter its name, business address, telephone number, and email address, if any, on the top of the form, along with the applicant's name, the address or location of the property for which financing is sought, and the date of the GFE.

''Purpose.''—This section describes the general purpose of the GFE as well as additional information available to the applicant.

''Shopping for your loan.''—This section requires no loan originator action.

''Important dates.''—This section briefly states important deadlines after which the loan terms that are the subject of the GFE may not be available to the applicant. In Line 1, the loan originator must state the date and, if necessary, time until which the interest rate for the GFE will be available. In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE. In Line 3, the loan originator must state how many calendar days within which the applicant must go to settlement once the interest rate is locked. In Line 4, the loan originator must state how many calendar days prior to settlement the interest rate would have to be locked, if applicable.

''Summary of your loan.''—In this section, for all loans the loan originator must fill in, where indicated:

(i) The initial loan amount;

(ii) The loan term; and

(iii) The initial interest rate.

►For reverse mortgage transactions:

(i) The initial loan amount disclosed on the GFE is the amount of the initial principal limit of the loan;

(ii) The loan term is disclosed as ''N/A'' when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time; and

(iii) The initial interest rate is the interest rate indicated on the legal obligation.◄

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment. ►For reverse mortgage transactions where there are no regular payment periods, the loan originator must disclose ''Not Applicable'' or ''N/A'' for the initial monthly amount owed for principal, interest, and any mortgage insurance.◄

The loan originator must indicate whether the interest rate can rise, and, if it can, must insert the maximum rate to which it can rise over the life of the loan. The loan originator must also indicate the period of time after which the interest rate can first change.

The loan originator must indicate whether the loan balance can rise even if the borrower makes payments on time, for example in the case of a loan with negative amortization. If it can, the loan originator must insert the maximum amount to which the loan balance can rise over the life of the loan. For Federal, State, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise. ►For reverse mortgage transactions, the loan originator must indicate that the loan balance can rise even if the borrower makes payments on time and the maximum amount to which the loan balance can rise must be disclosed as ''Unknown.''◄

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment. ►For reverse mortgage transactions, the loan originator must disclose that the monthly amount owed for principal, interest, and any mortgage insurance cannot rise.◄

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due. ►Reverse mortgage transactions are not considered to be balloon transactions for the purposes of this disclosure on the GFE.◄

''Escrow account information.''—The loan originator must indicate whether the loan includes an escrow account for property taxes and other financial obligations. The amount shown in the ''Summary of your loan'' section for ''Your initial monthly amount owed for principal, interest, and any mortgage insurance'' must be entered in the space for the monthly amount owed in this section. ►For reverse mortgage transactions where the lender will establish an arrangement to pay for such items as property taxes and homeowner's insurance through draws from the principal limit, the loan originator must indicate that an escrow account is included and the amount shown in this section must be disclosed as ''N/A.''◄

''Summary of your settlement charges.''—On this line, the loan originator must state the Adjusted Origination Charges from subtotal A of page 2, the Charges for All Other Settlement Services from subtotal B of page 2, and the Total Estimated Settlement Charges from the bottom of page 2.

Page 2

''Understanding your estimated settlement charges.''—This section details 11 settlement cost categories and amounts associated with the mortgage loan. For purposes of determining whether a tolerance has been met, the amount on the GFE should be compared with the total of any amounts shown on the HUD–1 in the borrower's column and any amounts paid outside closing by or on behalf of the borrower.

''Your Adjusted Origination Charges.''

Block 1, *''Our origination charge.''*—The loan originator must state here all charges that all loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, i.e., the amount may not increase at settlement.

Block 2, *''Your credit or charge (points) for the specific interest rate chosen.''*—For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is an additional charge (points) to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of that charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that ''The credit or charge for the interest rate you have chosen'' is included in ''Our origination charge'' above (see Block 1 instructions above), must insert the interest rate, and must also insert ''0'' in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (*i.e.,* the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender). When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative

amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE. If there is no net payment (*i.e.,* the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert ''0'' in Block 2 and may check either the box indicating there is a credit of ''0'' or the box indicating there is a charge of ''0''.

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked, i.e., any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase. (Note: An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.)

Line A, *''Your Adjusted Origination Charges.''*—The loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A will be a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked.

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

''Your Charges for All Other Settlement Services''

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3, Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3, *''Required services that we select.''*—In this block, the loan originator must identify each third party settlement service required and selected by the loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The loan originator must identify the specific required services and provide an estimate of the price of each service. Loan originators are also required to add the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 4, *''Title services and lender's title insurance.''*—In this block, the loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. The loan originator must also include any lender's title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or loan originator. All fees for title searches, examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 5, *''Owner's title insurance.''*—In this block, for all purchase transactions the loan originator must provide an estimate of the charge for the owner's title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. For non-purchase transactions, the loan originator may enter ''NA'' or ''Not Applicable'' in this Block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 6, *''Required services that you can shop for.''*—In this block, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The loan originator must identify the specific required services (*e.g.,* survey, pest inspection) and provide an estimate of the charge of each service. The loan originator must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 7, *''Government recording charge.''*—In this block, the loan originator must estimate the State and local government fees for recording the loan and title documents that can be expected to be charged at settlement. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 8, *''Transfer taxes.''*—In this block, the loan originator must estimate the sum of all State and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A zero tolerance applies to the sum of these estimated fees.

Block 9, *''Initial deposit for your escrow account.''*—In this block, the loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner's and other similar insurance, mortgage insurance, and other periodic charges. The loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the loan originator should check ''other'' and then list the items included.

Block 10, *''Daily interest charges.''*—In this block, the loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11, *''Homeowner's insurance.''*—The loan originator must estimate in this block the total amount of the premiums for any hazard insurance policy and other similar insurance, such as fire or flood insurance that must be purchased at or before settlement to meet the loan originator's requirements. The loan originator must also separately indicate the nature of each type of insurance required along with the charges. To the extent a loan originator requires that such insurance be part of an escrow account, the amount of the initial escrow deposit must be included in Block 9.

Line B, *''Your Charges for All Other Settlement Services.''*—The loan originator must add the numbers in Blocks 3 through 11 and enter this subtotal in the column at highlighted Line B.

Line A+B, *''Total Estimated Settlement Charges.''*—The loan originator must add the subtotals in the right-hand column at highlighted Lines A and B and enter this total in the column at highlighted Line A+B.

Page 3

''Instructions.''

''Understanding which charges can change at settlement.''—This section informs the applicant about which categories of settlement charges can increase at closing, and by how much, and which categories of settlement charges cannot increase at closing. This section requires no loan originator action.

''Using the tradeoff table.''—This section is designed to make borrowers aware of the relationship between their total estimated settlement charges on one hand, and the interest rate and resulting monthly payment on the other hand. The loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. The loan originator, at its option, may provide the borrower with the same information for two alternative loans, one with a higher interest rate, if available, and one with a lower

interest rate, if available, from the loan originator. The loan originator should list in the tradeoff table only alternative loans for which it would presently issue a GFE based on the same information the loan originator considered in issuing this GFE. The alternative loans must use the same loan amount and be otherwise identical to the loan in the GFE. The alternative loans must have, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon payments. If the loan originator fills in the tradeoff table, the loan originator must show the borrower the loan amount, alternative interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, and a new GFE must be provided by the loan originator.

''Using the shopping chart.''—This chart is a shopping tool to be provided by the loan originator for the borrower to complete, in order to compare GFEs.

''If your loan is sold in the future.''—This section requires no loan originator action.

PART 1026—TRUTH IN LENDING (REGULATION Z)

6. The authority citation for part 1026 is revised to read as follows:

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

7. Section 1026.1 is amended by revising paragraphs (a), (b), (c)(5), (d)(5), and (e) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552). ►Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*).◄ Information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0015 ►(Truth in Lending)◄.

(b) *Purpose.* The purpose of this part is to promote the informed use of consumer credit by requiring disclosures about its terms and cost►, 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 to result in a more effective advance disclosure to home buyers and sellers of settlement costs◄. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 1026.40 and mortgages that are subject to the requirements of § 1026.32. The regulation prohibits certain acts or practices in connection with credit secured by a dwelling in § 1026.36, and credit secured by a consumer's principal dwelling in § 1026.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 1026.46(b)(5). ►In addition, it imposes certain limitations on increases in costs for mortgage transactions subject to § 1026.19(e) and (f).◄

(c) *Coverage.* * * *

►(5) 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), 129C(h), 129D(h), or 129D(j)(1)(A) of the Truth in Lending Act or section 4(c) of the Real Estate Settlement Procedures Act.◄

(d) *Organization.* * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end loans that have rates or fees above specified amounts. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to § 1026.32. Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. ►Sections 1026.37 and 1026.38 set forth the special disclosure requirements for certain closed-end transactions secured by real property, as required by § 1026.19(e), (f), and (g).◄

* * * * *

(e) *Enforcement and liability.* Section 108 of the ►Truth in Lending◄ Act contains the administrative enforcement provisions ►for that Act◄. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the ►Truth in Lending◄ Act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the ►Truth in Lending◄ Act. ►Section 19 of the Real Estate Settlement Procedures Act contains the administrative enforcement provisions for that Act.◄

8. Section 1026.2 is amended by revising paragraphs (a)(3), (a)(6), and (a)(25) to read as follows:

§ 1026.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

* * * * *

►(3)(i) *Application* means the submission of a consumer's financial information for the purposes of obtaining an extension of credit.

(ii) Except for purposes of subpart B, subpart F, and subpart G of this part, an application consists of the submission of the consumer's name, the consumer's income, the consumer's 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.◄

* * * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 1026.19(a)(1)(ii), 1026.19(a)(2), ►1026.19(e)(1)(iii), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii),◄ 1026.31, and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as 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.

* * * * *

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§ 1026.6►,◄ [and] 1026.18, ►1026.19(e) and (f), and 1026.38(l)(6),◄ the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 1026.15 and 1026.23, the term does include interests that arise solely by operation of law.

* * * * *

9. Section 1026.3 is amended by revising the introductory text and adding new paragraph (h) to read as follows:

§ 1026.3 Exempt transactions.

►The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions◄ [This part does not apply to the following]:

* * * * *

►(h) *Partial exemption for certain mortgage loans.* The special disclosure requirements in § 1026.19(e), (f), and (g) do not apply to a transaction that satisfies all of the following criteria:

(1) The transaction is secured by a subordinate lien;

(2) The transaction is for the purpose of:

(i) Downpayment, closing costs, or other similar homebuyer assistance, such as principal or interest subsidies;

(ii) Property rehabilitation assistance;

(iii) Energy efficiency assistance; or

(iv) Foreclosure avoidance or prevention;

(3) The credit contract does not require the payment of interest;

(4) The credit contract provides that repayment of the amount of credit extended is:

(i) Forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer's principal dwelling for five years;

(ii) Deferred for a minimum of 20 years;

(iii) Deferred until sale of the property securing the transaction; or

(iv) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;

(5) The total of closing costs payable by the consumer in connection with the transaction is less than one percent of the amount of credit extended and includes no charges other than:

(i) Fees for recordation of security instruments, deeds, and similar documents;

(ii) A bona fide and reasonable application fee; and

(iii) A bona fide and reasonable fee for housing counseling services; and

(6) The creditor complies with all other applicable requirements of this part in connection with the transaction, including without limitation the disclosures required by § 1026.18 even if the creditor would not otherwise be subject to the disclosure requirements of § 1026.18.◄

10. Section 1026.4 is amended by revising paragraphs (a)(2), (c) introductory text, (d)(1), (d)(2), (d)(3), and (e), and adding new paragraph (g), to read as follows:

§ 1026.4 Finance charge.

(a) * * *

(2) *Special rule; closing agent charges.* ►Except as provided in § 1026.4(g), fees◄ [Fees] charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

* * * * *

(c) *Charges excluded from the finance charge.* ►Except as provided in § 1026.4(g), the◄ [The] following charges are not finance charges:

* * * * *

(d) *Insurance and debt cancellation and debt suspension coverage.* (1) *Voluntary credit insurance premiums.* ►Except as provided in § 1026.4(g), premiums◄ [Premiums] for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer, may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor ►or from an affiliate of the creditor,◄ the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* ►Except as provided in § 1026.4(g), charges◄ [Charges] or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not

required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

* * * * *

(e) *Certain security interest charges.* ►Except as provided in § 1026.4(g), if◄ [If] itemized and disclosed, the following charges may be excluded from the finance charge:

* * * * *

►(g) *Special rule for closed-end mortgage transactions.* Paragraphs (a)(2) and (c) through (e) of this section, other than paragraphs (c)(2), (c)(5), (c)(7)(v), and (d)(2), do not apply to closed-end transactions secured by real property or a dwelling.◄

11. Section 1026.17 is amended by adding introductory text to paragraph (a) and revising paragraphs (b), (f) introductory text, (g) introductory text, and (h) introductory text to read as follows:

§ 1026.17 General disclosure requirements.

(a) *Form of disclosures.* ►Except for the disclosures required by § 1026.19(e), (f), and (g):◄

* * * * *

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 1026.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 1026.19(b) and § 1026.20(c). For private education loan disclosures made in compliance with § 1026.47, special timing requirements are set forth in § 1026.46(d). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section. ►This paragraph (b) does not apply to the disclosures required by § 1026.19(e), (f), and (g).◄

* * * * *

(f) *Early disclosures.* Except for private education loan disclosures made in compliance with § 1026.47, if disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of § 1026.19(a)(2)►, (e), and (f)):◄ [and § 1026.19(a)(5)(iii)):]

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* Except for private education loan disclosures made in compliance with § 1026.47 ►and mortgage disclosures made in compliance with § 1026.19(a), (e), and (f)◄, if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

* * * * *

(h) *Series of sales—delay in disclosures.* ►Except for mortgage disclosures made in compliance with § 1026.19(a), (e), and (f), if◄ [If] a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

* * * * *

12. Section 1026.18 is amended by revising the introductory text and paragraphs (k), (s) introductory text, (s)(3)(i)(C), and (t)(1) to read as follows:

§ 1026.18 Content of disclosures.

For each transaction ►other than a mortgage transaction subject to § 1026.19(e) and (f)◄, the creditor shall disclose the following information as applicable:

* * * * *

(k) *Prepayment.* (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a ►charge◄ [penalty] may be imposed ►for paying all or part of a loan's principal balance before the date on which the principal is due.◄ [if the obligation is prepaid in full.]

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full ►or in part◄.

* * * * *

(s) *Interest rate and payment summary for mortgage transactions.* For a closed-end transaction secured by real property or a dwelling, other than a transaction ►that is subject to § 1026.19(e) and (f)◄ [secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D)], the creditor shall disclose the following information about the interest rate and payments:

* * * * *

(3) *Payments for amortizing loans.* (i) *Principal and interest payments.* * * *

(C) If an escrow account will be established, an estimate of the amount of taxes and insurance, including any mortgage insurance ►or any functional equivalent◄, payable with each periodic payment; and

* * * * *

(t) *''No-guarantee-to-refinance'' statement.* (1) *Disclosure.* For a closed-end transaction secured by real property or a dwelling, other than a transaction ►that is subject to § 1026.19(e) and (f)◄ [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.

* * * * *

13. Section 1026.19 is amended by revising paragraph (a)(1)(i) and (ii), removing paragraph (a)(5), and adding new paragraphs (e), (f), and (g), to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

(a) ►*Reverse mortgage*◄ [*Mortgage*] *transactions subject to RESPA.* (1)(i) *Time of disclosures.* In a ►reverse◄ mortgage transaction subject to ►both § 1026.33 and◄ the Real Estate Settlement Procedures Act (12 U.S.C.

2601 *et seq.*) that is secured by the consumer's dwelling, ⟦other than a home equity line of credit subject to § 1026.40 or mortgage transaction subject to paragraph (a)(5) of this section,⟧ the creditor shall make good faith estimates of the disclosures required by § 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a ►reverse◄ mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount.

* * * * *

⟦(5) *Timeshare plans.* In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)):

(i) The requirements of paragraphs (a)(1) through (a)(4) of this section do not apply;

(ii) The creditor shall make good faith estimates of the disclosures required by § 1026.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and

(iii) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)(5)(ii) of this section by more than ⅛ of 1 percentage point in a regular transaction or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 1026.22, the creditor shall disclose all the changed terms no later than consummation or settlement.⟧

* * * * *

►(e) *Mortgage loans secured by real property—Early disclosures.* (1) *Provision.* (i) *Creditor.* 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 in § 1026.37.

(ii) *Mortgage broker.* A mortgage broker may provide a consumer with the disclosures required under paragraph (e)(1)(i) of this section, provided the broker complies with all requirements of this paragraph (e) as if it were the creditor. The creditor shall ensure that disclosures are provided in accordance with the requirements of this paragraph (e). Disclosures provided by a broker in accordance with the requirements of this paragraph (e) satisfy the creditor's obligation under paragraph (e)(1)(i) of this section.

(iii) *Timing.* The creditor shall deliver the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3). The creditor shall deliver the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(iv) *Delivery.* If any disclosures required under paragraph (e)(1)(i) of this section 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.

(v) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period for early disclosures required under paragraph (e)(1)(iii) of this section, after receiving the disclosures required under paragraph (e)(1)(i) of this section. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(vi) *Shopping for settlement service providers.* (A) *Shopping permitted.* 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 requirements.

(B) *Disclosure of services.* The creditor shall identify the services for which the consumer is permitted to shop in the disclosures provided pursuant to paragraph 19(e)(1)(i) of this section.

(C) *Written list of providers.* 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. The creditor shall provide this written list of settlement service providers separately from the disclosures required by paragraph (e)(1)(i) of this section but in accordance with the timing requirements in paragraph (e)(1)(iii) of this section.

(2) *Pre-disclosure activity.* (i) *Imposition of fees on consumer.* (A) *Fee restriction.* Except as provided in paragraph (e)(2)(i)(B) of this section, 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 paragraph (e)(1)(i) of this section before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section and indicated to the creditor an intent to proceed with the transaction described by those disclosures.

(B) *Exception to fee restriction.* A creditor or other person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section.

(ii) *Written information provided to consumer.* If a creditor provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under paragraph (e)(1)(i) of this section and indicates intent to proceed with the transaction, the creditor 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.''

(iii) *Verification of information.* The creditor shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by paragraph (e)(1)(i) of this section.

(3) *Good faith determination for estimates of closing costs.* (i) *General rule.* An estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the amount disclosed under paragraph (e)(1)(i) of this section, except as otherwise provided in paragraph (e)(3)(ii) through (iv) of this section.

(ii) *Limited increases permitted for certain charges.* An estimate of a charge for a third-party service or a recording fee is in good faith if:

(A) The aggregate amount of charges for third-party services and recording fees paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under paragraph (e)(1)(i) of this section by more than 10 percent;

(B) The charge is not paid to an affiliate of the creditor; and

(C) The creditor permits the consumer to shop for the service, consistent with paragraph (e)(1)(vi)(A) of this section.

(iii) *Variations permitted for certain charges.* An estimate of the following charges is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount actually paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section:

(A) Prepaid interest;

(B) Property insurance premiums;

(C) Amounts placed into an escrow, impound, reserve, or similar account; and

(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided pursuant to paragraph (e)(1)(vi)(C) of this section.

(iv) *Revised estimates.* For the purpose of determining good faith under paragraph (e)(3)(i) and (ii) of this section, a charge paid by or imposed on the consumer may exceed the originally estimated charge if the revision is due to one of the following reasons:

(A) *Changed circumstance affecting settlement charges.* Changed circumstances cause the estimated charges to increase or, in the case of estimated charges identified in paragraph (e)(3)(ii) of this section, cause the aggregate amount of such charges to increase by more than 10 percent. For purposes of this paragraph, ''changed circumstance'' means:

(*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 required under paragraph (e)(1)(i) of this section and that was inaccurate or changed after the disclosures were provided; or

(*3*) New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures.

(B) *Changed circumstance affecting eligibility.* The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance, as defined under paragraph (e)(3)(iv)(A) of this section, affected the consumer's creditworthiness or the value of the security for the loan.

(C) *Revisions requested by the consumer.* The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.

(D) *Interest rate dependent charges.* The points or lender credits change because the interest rate was not set when the disclosures required under paragraph (e)(1)(i) of this section were provided. On the date the interest rate is set, the creditor shall provide revised disclosures under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, bona fide discount points, and lender credits.

(E) *Expiration.* The consumer expresses an intent to proceed with the transaction more than ten business days after the disclosures required under paragraph (e)(1)(i) of this section are provided.

(F) *Delayed settlement date on a construction loan.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are originally provided, the creditor may provide revised disclosures to the consumer if the original disclosures state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (f) of this section.

(4) *Provision of revised disclosures.* (i) Except as provided in paragraph (e)(4)(ii) of this section, if a creditor provides a revised disclosure pursuant to paragraph (e)(3)(iv) of this section, the creditor shall provide such revised disclosure within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraph (e)(3)(iv)(A) through (F) of this section applies.

(ii) The creditor shall not deliver a revised disclosure pursuant to paragraph (e)(3)(iv) of this section on or after the date on which the creditor delivers the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive a revised version of the disclosure required under paragraph (e)(1)(i) of this section no later than four days prior to consummation.

Alternative 1—Paragraph (f)(1)

(f) *Mortgage loans secured by real property—Final disclosures.* (1) *Provision.* (i) *Scope.* 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.

(ii) *Timing.* (A) *In general.* Except as provided in paragraph (f)(1)(ii)(B) or (f)(2) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.

(B) *Timeshares.* 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 paragraph (f)(1)(i) of this section no later than consummation.

(iii) *Delivery.* If any disclosures required under paragraph (f)(1)(i) of this section 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.

(iv) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period for the disclosures required under paragraph (f)(1)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

Alternative 2—Paragraph (f)(1)

(f) *Mortgage loans secured by real property—Final disclosures.* (1) *Provision.* (i) *Scope.* 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.

(ii) *Timing.* (A) *In general.* Except as provided in paragraph (f)(1)(ii)(B) or (f)(2) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.

(B) *Timeshares.* 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 paragraph (f)(1)(i) of this section no later than consummation.

(iii) *Delivery.* If any disclosures required under paragraph (f)(1)(i) of this section 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.

(iv) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period for the disclosures required under paragraph (f)(1)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(v) *Settlement agent.* A settlement agent may provide a consumer with the disclosures required under paragraph (f)(1)(i) of this section, provided the settlement agent complies with all requirements of this paragraph (f) as if it were the creditor. The creditor shall ensure that disclosures are provided in accordance with the requirements of this paragraph (f). Disclosures provided by a settlement agent in accordance with the requirements of this paragraph (f) satisfy the creditor's obligation under paragraph (f)(1)(i) of this section.

(2) *Subsequent changes.* If the disclosure provided pursuant to paragraph (f)(1)(i) of this section is subsequently revised for any of the reasons described in this paragraph (f)(2), a creditor need not comply with the timing requirements in paragraph (f)(1)(ii) of this section when providing a revised disclosure:

(i) *Changes due to consumer and seller negotiations.* If, after the creditor provides the consumer with the disclosures required under paragraph (f)(1)(i) of this section, the consumer and the seller agree to make changes to the transaction that affect items disclosed pursuant to paragraph (f)(1)(i) of this section, the creditor shall deliver revised disclosures reflecting such changes at or before consummation.

(ii) *Changes to the amount actually paid by the consumer.* If the amount actually paid by the consumer does not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than one hundred dollars the creditor shall deliver revised disclosures at or before consummation.

(iii) *Changes due to events occurring after consummation.* If an event occurs after consummation that causes disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results solely from payments to a government entity in connection with the transaction, the creditor shall deliver revised disclosures to the consumer not later than the third business day after the event occurs, provided the consumer receives the revised disclosures no later than 30 days after consummation.

(iv) *Changes due to clerical errors.* A creditor does not violate section (f)(1)(i) if the disclosures provided under (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers revised disclosures as soon as reasonably practicable and no later than 30 days after consummation.

(v) *Refunds related to the good faith analysis.* If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of this section, the creditor complies with paragraph (e)(1)(i) of this section 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 paragraph (f)(1)(i) of this section if the creditor delivers revised disclosures that reflect such refund as soon as reasonably practicable and no later than 30 days after consummation.

(3) *Charges disclosed.* (i) *Actual charge.* 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 as otherwise provided in paragraph (f)(3)(ii) of this section.

(ii) *Average charge.* A creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:

(A) 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;

(B) The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;

(C) The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and

(D) The creditor or settlement service provider does not use an average charge:

(*1*) For any type of insurance;

(*2*) For any charge based on the loan amount or property value; or

(*3*) If doing so is otherwise prohibited by law.

(4) *Transactions involving a seller.* (i) *Provision to seller.* In a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the person conducting the real estate closing shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction.

(ii) *Timing.* The person conducting the real estate closing shall provide the disclosures required under paragraph (f)(4)(i) of this section no later than the day of consummation. If an event occurs after consummation that causes disclosures required under paragraph (f)(4)(i) of this section 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.

(iii) *Charges disclosed.* The amount imposed on the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.

(5) *No fee.* 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 paragraph (f)(1)(i) of this section, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Special information booklet at time of application.* (1) *Creditor to provide special information booklet.* Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet to a consumer who applies for a consumer credit transaction secured by real property.

(i) The creditor shall deliver the special information booklet to the consumer not later than three business days after the application is received. However, if the creditor denies the consumer's application for credit before the end of the three-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

(ii) In the case of a home equity line of credit subject to § 1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit,'' or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for the following types of transactions:

(A) Refinancing transactions;

(B) Closed-end loans when the lender takes a subordinate lien;

(C) Reverse mortgages; and

(D) Any other consumer credit transaction secured by real property whose purpose is not the purchase of a one-to-four family residential property.

(2) *Permissible changes.* No changes to, deletions from, or additions to the special information booklet shall be made other than the permissible changes specified in paragraphs (g)(2)(i) through (iv) of this section.

(i) In the Complaints section of the booklet, it is a permissible change to substitute ''the Bureau of Consumer Financial Protection'' for ''HUD's Office of RESPA'' and ''the RESPA office.''

(ii) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that homeowners may find information on and assistance in avoiding foreclosures at *http://www.consumerfinance.gov.* The deletion of the reference to the HUD Web page, *http://www.hud.gov/foreclosure/,* in the Avoiding Foreclosure section of the booklet is not a permissible change.

(iii) In the No Discrimination Section of the Appendix to the booklet, it is a permissible change to substitute ''the Bureau of Consumer Financial Protection'' for the reference to the ''Board of Governors of the Federal Reserve System.'' In the Contact Information section of the Appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: ''Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552; *www.consumerfinance.gov/learnmore.*'' It is also a permissible change to remove the contact information for HUD's Office of RESPA and Interstate Land Sales from the Contact Information section of the Appendix to the booklet.

(iv) The 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. Names, addresses, and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.◄

14. Section 1026.22 is amended by revising paragraphs (a)(4)(ii)(A) and (a)(5) to read as follows:

§ 1026.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* * * *

(4) *Mortgage loans.* If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:

(i) The rate results from the disclosed finance charge; and

(ii)(A) The disclosed finance charge would be considered accurate under § 1026.18(d)(1) ►or 1026.38(o)(2), as applicable◄; or

(B) For purposes of rescission, if the disclosed finance charge would be considered accurate under § 1026.23(g) or (h), whichever applies.

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed finance charge is calculated incorrectly but is considered accurate under § 1026.18(d)(1)► or 1026.38(o)(2), as applicable,◄ or § 1026.23(g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.

* * * * *

15. Section 1026.25 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 1026.25 Record retention.

(a) *General rule.* A creditor shall retain evidence of compliance with this part (other than advertising requirements under §§ 1026.16 and 1026.24►, and other than the requirements under § 1026.19(e) and (f)◄) for [2]►two◄ years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the Act.

* * * * *

►(c) *Records related to certain requirements for mortgage loans.* (1) *Records related to requirements for loans secured by real property.* (i) *General rule.* Except as provided under paragraph (c)(1)(ii) of this section, 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.

(ii) *Closing Disclosures.* (A) A creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation.

(B) 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 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. Such owner or servicer shall retain such disclosures for the remainder of the five-year period described under paragraph (c)(1)(ii)(A) of this section.

(C) The Bureau shall have the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) and (f)(4)(i).

(iii) *Electronic records.* A creditor shall retain evidence of compliance in electronic, machine readable format.

(2) [Reserved]◄

16. Section 1026.28 is amended by revising paragraph (a)(1) to read as follows:

§ 1026.28 Effect on State laws.

(a) *Inconsistent disclosure requirements.* (1) Except as provided in paragraph (d) of this section, State law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the Act and the implementing provisions of this part are preempted to the extent of the inconsistency. A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law 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. After the Bureau determines that a State law is inconsistent, a creditor may not make disclosures using the inconsistent term or form. ►A determination as to 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 §§ 1026.19(e) and (f), 1026.37, and 1026.38 shall be made in accordance with this section and not 12 CFR 1024.13.◄

* * * * *

17. New § 1026.37 is added to read as follows:

►§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

For each transaction subject to § 1026.19(e), the creditor shall disclose the information in this section, as applicable:

(a) *General information.* (1) *Form title.* The title of the form, ''Loan Estimate,'' using that term.

(2) *Form purpose.* The statement, ''Save this Loan Estimate to compare with your Closing Disclosure.''

(3) *Creditor.* The name and address of the creditor making the disclosure.

(4) *Date issued.* The date the disclosures are mailed or delivered to the consumer by the creditor, labeled ''Date Issued.''

(5) *Applicants.* The consumer's name and mailing address, labeled ''Applicants.''

(6) *Property.* The street address or location of the property that secures the transaction, labeled ''Property.''

(7) *Sale price.* (i) For credit transactions that involve a seller, the contract sale price of the property identified in paragraph (a)(6) of this section, labeled ''Sale Price.''

(ii) For credit transactions that do not involve a seller, the estimated value of the property identified in paragraph (a)(6), labeled ''Est. Prop. Value.''

(8) *Loan term.* The term to maturity of the credit transaction, stated in years, labeled ''Loan Term.''

(9) *Purpose.* The consumer's intended use for the credit, labeled ''Purpose,'' using one of the following terms:

(i) *Purchase.* If the credit is to finance the acquisition of the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a ''Purchase.''

(ii) *Refinance.* The creditor shall disclose that the loan is for a ''Refinance'' if the credit is a refinance of an existing obligation, consistent with § 1026.20(a), by any creditor, that is secured by the property identified in paragraph (a)(6) of this section.

(iii) *Construction.* If the credit will be used to finance the construction of a dwelling on the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for ''Construction.''

(iv) *Home equity loan.* If the credit is not for one of the purposes described in paragraphs (a)(9)(i)–(iii) of this section, the creditor shall disclose that the loan is for a ''Home Equity Loan.''

(10) *Product.* A description of the loan product, labeled ''Product.'' (i) The description of the loan product shall include one of the following terms, as applicable:

(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, the creditor shall disclose the loan product as an ''Adjustable Rate.''

(B) *Step rate.* If the interest rate will change after consummation, and the rates that will apply and periods for which they will apply are known at consummation, the creditor shall disclose the loan product as a ''Step Rate.''

(C) *Fixed rate.* If the loan product is not an Adjustable Rate or a Step Rate, as described in paragraphs (a)(10)(i)(A) and (B) of this section, respectively, the creditor shall disclose the loan product as a ''Fixed Rate.''

(ii) The description of the loan product shall include the features that may change the periodic payment, using the following terms as required by paragraph (a)(10)(iii), as applicable:

(A) *Negative amortization.* If the principal balance may increase due to the addition of accrued interest to the principal balance, the creditor shall disclose that the loan product has a ''Negative Amortization'' feature.

(B) *Interest only.* If one or more regular periodic payments may be applied only to interest accrued and not to the loan principal, the creditor shall disclose that the loan product has an ''Interest Only'' feature.

(C) *Step payment.* If scheduled variations in regular periodic payment amounts occur that are not caused by changes to the interest rate during the loan term, the creditor shall disclose that the loan product has a ''Step Payment'' feature.

(D) *Balloon payment.* The creditor shall disclose that the loan has a ''Balloon Payment'' feature if the transaction includes a ''balloon payment,'' as that term is defined in § 1026.37(b)(5).

(E) *Seasonal payment.* If the terms of the legal obligation expressly provide that regular periodic payments are not scheduled in between specified unit-periods on a regular basis, the creditor shall disclose that the loan product has a ''Seasonal Payment'' feature.

(iii) The disclosure of a loan feature under paragraph (a)(10)(ii) of this section shall precede the disclosure of the loan product under paragraph (a)(10)(i) of this section. If a transaction has more than one of the loan features described in paragraph (a)(10)(ii) of this section, the creditor shall disclose only the first applicable feature in the order the features are listed in paragraph (a)(10)(ii) of this section.

(iv) The disclosures required by paragraphs (a)(10)(i) and (ii) of this section must each be preceded by a description of any introductory rate period, adjustment period, or other time period, as applicable.

(11) *Loan type.* The type of loan, labeled ''Loan Type,'' offered to the consumer using one of the following terms, as applicable:

(i) *Conventional.* If the loan is not guaranteed or insured by a Federal or State government agency, the creditor shall disclose that the loan is a ''Conventional.''

(ii) *FHA.* If the loan is insured by the Federal Housing Administration, the creditor shall disclose that the loan is an ''FHA.''

(iii) *VA.* If the loan is guaranteed by the U.S. Department of Veterans Affairs, the creditor shall disclose that the loan is a ''VA.''

(iv) *Other.* For federally-insured or guaranteed loans other than those described in paragraphs (a)(11)(ii) and

(iii) of this section and loans insured or guaranteed by a State agency, the creditor shall disclose the loan type as ''Other,'' and provide a brief description of the loan type.

(12) *Loan identification number (Loan ID #).* A unique number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled as ''Loan ID #.''

(13) *Rate lock.* A statement of whether the interest rate disclosed pursuant to paragraph (b)(2) of this section is set for a specific period of time, labeled ''Rate Lock.''

(i) For transactions in which the interest rate is set for a specific period of time, the creditor must provide the date and time (including the applicable time zone) when that period ends.

(ii) The ''Rate Lock'' statement required by this paragraph (a)(13) shall be accompanied by a statement that the interest rate, any points, and any lender credits may change unless the interest rate has been set, and the date and time (including the applicable time zone) at which estimated closing costs expire.

(b) *Loan terms.* A separate table labeled ''Loan Terms'' that includes the following information and satisfies the following requirements:

(1) *Loan amount.* The amount of credit to be extended under the terms of the legal obligation, labeled the ''Loan Amount.''

(2) *Interest rate.* The initial interest rate that will be applicable to the transaction, labeled the ''Interest Rate.'' If the initial interest rate may adjust based on an index, the amount disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.

(3) *Principal and interest payment.* The initial periodic payment amount that will be due under the terms of the legal obligation, labeled ''Principal & Interest,'' immediately preceded by the applicable unit-period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed pursuant to paragraph (c) of this section. If the initial periodic payment amount may adjust based on an index, the amount disclosed shall be calculated using the fully-indexed rate disclosed under paragraph (b)(2) of this section.

(4) *Prepayment penalty.* A statement of whether the transaction includes a prepayment penalty, labeled ''Prepayment Penalty.'' For purposes of this paragraph (b)(4), ''prepayment penalty'' means a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due.

(5) *Balloon payment.* A statement of whether the transaction includes a balloon payment, labeled ''Balloon Payment.'' For purposes of this paragraph (b)(5), ''balloon payment'' means a payment that is more than two times a regular periodic payment and is not itself a regular periodic payment. ''Balloon payment'' includes the payment or payments under a transaction that requires only one or two payments during the loan term.

(6) *Adjustments after consummation.* For each amount required to be disclosed by paragraphs (b)(1) through (3) of this section, a statement of whether the amount may increase after consummation as an affirmative or negative answer to the question ''Can this amount increase after closing?'' and, if in the case of an affirmative answer, the following additional information, as applicable:

(i) *Adjustment in loan amount.* The maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation using the phrase ''Can go as high as'' or ''Will go as high as,'' respectively.

(ii) *Adjustment in interest rate.* The frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the disclosure required by paragraph (j) of this section. If the loan term, as defined under paragraph (a)(8) of this section, may increase based on an adjustment of the interest rate, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term.

(iii) *Increase in periodic payment.* The scheduled frequency of adjustments to the periodic principal and interest payment, the due date of the first adjusted principal and interest payment, the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, a reference to the disclosure required by paragraph (i) of this section. If there is a period during which only interest is required to be paid, the disclosure required by this paragraph (b)(6)(iii) shall also state that such periodic payments will include ''only interest'' and ''no principal'' and the due date of the last periodic payment of such period.

(7) *Details about prepayment penalty and balloon payment.* The information required to be disclosed by paragraphs (b)(4) and (5) of this section shall be disclosed as an affirmative or negative answer to the question ''Does the loan have these features?'' If an affirmative answer for a prepayment penalty or balloon payment is required to be disclosed, the following information, as applicable:

(i) The maximum amount of the prepayment penalty that may be imposed and the date when the period under which the penalty may be imposed terminates; and

(ii) The maximum amount of the balloon payment(s) and the due date(s).

(8) *Timing.* The dates required to be disclosed by paragraphs (b)(6) and (7) of this section shall be disclosed as the year in which the date occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation.

(c) *Projected payments.* In a separate table under the heading ''Projected Payments,'' an itemization of each separate periodic payment or range of payments, together with an estimate of taxes, insurance, and assessments and the payments to be made with escrow account funds.

(1) *Periodic payment or range of payments.* (i) The initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in paragraph (c)(1)(ii) of this section, the following events require 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.

(ii) The table required by this paragraph (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 paragraph (c)(1)(i) of this section after the second to occur, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to the following exceptions:

(A) A final balloon payment shall always be disclosed as a separate periodic payment or range of payments, in which case no more than three other separate periodic payments or ranges of payments are disclosed.

(B) The automatic termination of mortgage insurance coverage, or any functional equivalent, under applicable law shall require disclosure of 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 paragraph (c)(1)(i) of this section, other than the termination of mortgage insurance, or any functional equivalent, does not exceed two.

(C) If changes to periodic principal and interest payments described in paragraph (c)(1)(i)(A) of this section would require more than one separate disclosure during a single year, such periodic payments shall be disclosed as a single range of payments.

(iii) A range of payments is required under this paragraph (c)(1) 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 paragraph (c)(1)(ii) of this section. When a range of payments is required, the creditor must disclose the minimum and maximum amount for both the principal and interest payment under paragraph (c)(2)(i) of this section and the total periodic payment under paragraph (c)(2)(iv) of this section. In the case of an interest rate adjustment, 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 the minimum payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate.

(2) *Itemization.* Each separate periodic payment or range of payments included in the table required by this paragraph (c) shall be itemized as follows:

(i) The amount payable for principal and interest, labeled ''Principal & Interest,'' including the term ''only interest'' if the payment or range of payments includes any interest-only payment;

(ii) The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to paragraph (c)(2)(i) of this section, labeled ''Mortgage Insurance'';

(iii) The amount payable into an escrow account to pay some or all of the charges described in paragraphs (c)(4)(ii)(A) through (E) of this section, as applicable, labeled ''Estimated Escrow,'' together with a statement that the amount disclosed can increase over time; and

(iv) The total periodic payment, calculated as the sum of the amounts disclosed pursuant to paragraphs (c)(2)(i) through (iii) of this section, labeled ''Total Monthly Payment.''

(3) *Subheadings.* (i) The labels required pursuant to paragraph (c)(2) of this section must be listed under the subheading ''Payment Calculation.''

(ii) Each separate periodic payment or range of payments to be disclosed under this paragraph (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. The subheadings must be stated in a sequence of whole years from the date that the first such payment is due.

(4) *Taxes, insurance, and assessments.* Under the information required by paragraphs (c)(1) through (3) of this section:

(i) The label ''Estimated Taxes, Insurance & Assessments'';

(ii) The sum of the following charges, if applicable, expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established:

(A) Property taxes;

(B) Mortgage-related insurance premiums required by the creditor, other than amounts payable for mortgage insurance premiums;

(C) Homeowner's association, condominium, or cooperative fees;

(D) Ground rent or leasehold payments; and

(E) Special assessments;

(iii) A statement that the amount disclosed pursuant to paragraph (c)(4)(ii) of this section can increase over time;

(iv) A statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for property taxes, homeowner's insurance, and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds;

(v) A statement that the consumer must pay separately any amounts described in paragraph (c)(4)(ii) of this section that are not paid by the creditor using escrow account funds; and

(vi) A reference to the information disclosed pursuant to paragraph (g)(3) of this section.

(5) *Calculation of taxes and insurance.* For purposes of paragraphs (c)(2)(iii) and (4)(ii) of this section, estimated property taxes and homeowner's insurance shall reflect:

(i) 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, for property taxes; and

(ii) The replacement costs of the property during the initial year after the transaction, for homeowner's insurance.

(d) *Cash to close.* In a separate table, under the heading ''Cash to Close'':

(1) The dollar amount as calculated in accordance with paragraph (h)(8) of this section, labeled ''Estimated Cash to Close'';

(2) The dollar amount calculated in accordance with paragraph (f)(4) of this section, described as ''Loan Costs'';

(3) The dollar amount calculated in accordance with paragraph (g)(5) of this section, described as ''Other Costs'';

(4) The dollar amount disclosed pursuant to paragraph (g)(6)(ii) of this section, described as ''Lender Credits'';

(5) The sum of the amounts disclosed pursuant to paragraphs (d)(2), (d)(3) and (d)(4) of this section, described as ''Closing Costs''; and

(6) A statement referring the consumer to the location where tables required pursuant to paragraphs (f) and (g) of this section are provided for details.

(e) *Web site reference.* A statement that the consumer may obtain additional information and tools at the Web site of the Bureau, and the link/URL address to the Web site: *www.consumerfinance.gov/learnmore.*

(f) *Closing cost details; loan costs.* Under the master heading ''Closing Cost Details,'' in a table under the heading ''Loan Costs,'' all loan costs associated with the transaction. The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (4) of this section.

(1) *Origination charges.* Under the subheading ''Origination Charges,'' an itemization of each amount, and a subtotal of all such amounts, that the consumer will pay to each creditor and loan originator for originating and extending the credit.

(i) The points that the consumer will pay to the creditor to reduce the interest rate shall be separately itemized, as both a percentage of the amount of credit extended and a dollar amount, and labeled '' __% of Loan Amount

(Points).'' If points are not paid by the consumer, the disclosure required by this paragraph (f)(1)(i) shall show the amount as zero.

(ii) The number of items disclosed under this paragraph (f)(1), including the points disclosed under paragraph (f)(1)(i) of this section, shall not exceed 13.

(2) *Services you cannot shop for.* Under the subheading ''Services You Cannot Shop For,'' an itemization of each amount, and a subtotal of all such amounts, for services for which the consumer cannot shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

(i) For any item that is a component of title insurance or is for conducting the closing, the introductory description ''Title—'' shall appear at the beginning of the label for that item.

(ii) The number of items disclosed under this paragraph (f)(2) shall not exceed 13.

(3) *Services you can shop for.* Under the subheading ''Services You Can Shop For,'' an itemization of each amount, and a subtotal of all such amounts, for services for which the consumer can shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

(i) For any item that is a component of title insurance or is for conducting the closing, the introductory description ''Title—'' shall appear at the beginning of the label for that item.

(ii) The number of items disclosed under this paragraph (f)(3) shall not exceed 14.

(4) *Total loan costs.* Under the subheading ''Total Loan Costs,'' the sum of the subtotals disclosed under paragraphs (f)(1) through (3) of this section.

(5) *Item descriptions and ordering.* The items listed as loan costs pursuant to this paragraph (f) shall be labeled using terminology that briefly and clearly describes each item, subject to the requirements of paragraphs (f)(1)(i), (f)(2)(i), and (f)(3)(i) of this section.

(i) The item prescribed in paragraph (f)(1)(i) of this section for points shall be the first item listed in the disclosure pursuant to paragraph (f)(1) of this section.

(ii) All other items must be listed in alphabetical order by their labels under the applicable subheading.

(6) *Use of addenda.* (i) An addendum to a form of disclosures prescribed by § 1026.37(o) may not be used for items required to be disclosed by paragraph (f)(1) or (2) of this section. If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (f)(1)(ii) or (2)(ii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraph (f)(1)(ii) or (2)(ii), as applicable, using the label ''Additional Charges'' to describe such charges.

(ii) An addendum to a form of disclosures prescribed by § 1026.37(o) may be used for items required to be disclosed by paragraph (f)(3) of this section. If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (f)(3)(ii), the remaining charges shall be disclosed as follows:

(A) Label the last line permitted under paragraph (f)(3)(ii) with an appropriate reference to an addendum and list the remaining items on the addendum in accordance with the requirements in paragraphs (f)(3) and (5) of this section; or

(B) Disclose the remaining charges as an aggregate amount in the last line permitted under paragraph (f)(3)(ii), using the label ''Additional Charges.''

(g) *Closing cost details; other costs.* Under the master heading ''Closing Cost Details,'' costs associated with the transaction that are in addition to the costs disclosed under § 1026.37(f), listed in a table under the heading ''Other Costs.'' The table consists of the items and amounts listed under six subheadings, described in paragraphs (g)(1) through (6) of this section.

(1) *Taxes and other government fees.* Under the subheading ''Taxes and Other Government Fees,'' the amounts to be paid to State and local governments for taxes and other government fees, and the subtotal of all such amounts, as follows:

(i) On the first line, using the label ''Recording Fees and Other Taxes,'' the sum of all recording fees and other government fees and taxes, except for transfer taxes.

(ii) On the second line, using the label ''Transfer Taxes,'' the sum of all transfer taxes.

(iii) If an amount for recording fees or transfer taxes is not charged to the consumer, the dollar amount disclosed on the applicable line required by this paragraph (g)(1) must be zero.

(2) *Prepaids.* Under the subheading ''Prepaids,'' an itemization of the amounts to be paid by the consumer in advance of the first scheduled payment, and the subtotal of all such amounts, as follows:

(i) On the first line, using the label ''Homeowner's Insurance Premium (__ months),'' the number of months for which homeowner's premiums are to be paid by the consumer at consummation and the total dollar amount to be paid.

(ii) On the second line, using the label ''Mortgage Insurance Premium (__ months),'' the number of months for which mortgage insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid.

(iii) On the third line, using the label ''Prepaid Interest (____ per day for __ days @ __%),'' the amount of interest to be paid per day, the number of days for which prepaid interest will be collected, the interest rate, and the total dollar amount to be paid.

(iv) On the fourth line, using the label ''Property Taxes,'' the number of months for which property taxes are to be paid by the consumer and the total dollar amount to be paid.

(v) If an amount is not charged to the consumer for any item for which this paragraph (g)(2) prescribes a label, the dollar amount disclosed on that line must be zero.

(vi) A maximum of three additional items may be disclosed under this paragraph (g)(2), and each additional item must be identified and include the applicable time period covered by the amount to be paid by the consumer at consummation and the total amount to be paid.

(3) *Initial escrow payment at closing.* Under the subheading ''Initial Escrow Payment at Closing,'' an itemization of the amounts that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges, and the subtotal of all such amounts, as follows:

(i) On the first line, using the label ''Homeowner's Insurance $__ per month for __ mo.,'' the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer to insure the property against hazards.

(ii) On the second line, using the label ''Mortgage Insurance $__ per month for __ mo.,'' the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid by the consumer for mortgage insurance.

(iii) On the third line, using the label ''Property Taxes $__ per month for __ mo.,'' the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid by the consumer for property taxes.

(iv) If an amount is not charged to the consumer for any item for which this paragraph (g)(3) prescribes a label, the dollar amount disclosed on that line must be zero.

(v) A maximum of five additional items may be disclosed under this paragraph (g)(3), and each additional item must be identified and include the applicable amount per month, the number of months collected at consummation, and the total amount to be paid.

(4) *Other.* Under the subheading ''Other,'' an itemization of any other amounts the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate, and the subtotal of all amounts itemized.

(i) For any item that is a component of title insurance, the introductory description ''Title—'' shall appear at the beginning of the label for that item.

(ii) The parenthetical description ''(optional)'' shall appear at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(iii) The number of items disclosed under this paragraph (g)(4) shall not exceed five.

(iv) If there are no such amounts, this table must be left blank.

(5) *Total other costs.* With the label ''Total Other Costs,'' the sum of the amounts disclosed pursuant to paragraphs (g)(1) through (4) of this section.

(6) *Total closing costs.* With the label ''Total Closing Costs,'' the component amounts and their sum, as follows:

(i) The sum of the amounts disclosed as Loan Costs and Other Costs under paragraphs (f)(4) and (g)(5) of this section, disclosed with the label ''D + I'';

(ii) The amount of any lender credits, disclosed as a negative number with the label ''Lender Credits''; and

(iii) Add the amount calculated under paragraph (g)(6)(i) and the (negative) amount disclosed under paragraph (g)(6)(ii) and disclose this sum as ''Total Closing Costs.''

(7) *Item descriptions and ordering.* In identifying the items listed as Other Costs pursuant to this paragraph (g), the creditor must use terminology that briefly and clearly describes the item.

(i) The items prescribed in paragraphs (g)(1)(i) and (ii), (g)(2)(i) through (iv), and (g)(3)(i) through (iii) of this section must be listed in the order prescribed as the initial items under the applicable subheading, with any additional items to follow.

(ii) All additional items must be listed in alphabetical order under the applicable subheading.

(8) *Use of addenda.* An addendum to a form of disclosures prescribed by § 1026.37(o) may not be used for items required to be disclosed by this paragraph (g). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (g)(2)(vi), (3)(v), or (4)(iii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraph (g)(2)(vi), (3)(v), or (4)(iii), as applicable, using the label ''Additional Charges.''

(h) *Calculating cash to close.* In a separate table, under the master heading ''Closing Cost Details,'' required by paragraph (f) of this section, under the heading ''Calculating Cash to Close,'' the total amount of cash or other funds that must be provided by the consumer at consummation must be disclosed, with an itemization of that amount into the following component amounts:

(1) *Total closing costs.* The amount disclosed under paragraph (g)(6)(iii) of this section, disclosed as a positive number;

(2) *Closing costs to be financed.* The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number;

(3) *Downpayment and other funds from borrower.* (i) In a purchase transaction, as defined in § 1026.37(a)(9)(i), the actual amount of the difference between the purchase price of the property and the principal amount of the loan, disclosed as a positive number; or

(ii) In all other transactions, the estimated ''Funds from Borrower,'' labeled using that term, as determined in accordance with paragraph (h)(5) of this section;

(4) *Deposit.* The amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number;

(5) *Funds for borrower.* The amount of ''Funds from Borrower,'' to be disclosed under paragraph (h)(3)(ii) of this section, and of ''Funds for Borrower,'' disclosed under this paragraph (h)(5) of this section, are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (h)(2) of this section) from the total amount of all existing debt being satisfied in the transaction (except to the extent the satisfaction of such existing debt is disclosed under paragraph (g) of this section).

(i) If the calculation under this paragraph (h)(5) of this section yields an amount that is a positive number, such amount shall be disclosed under paragraph (h)(3)(ii) of this section, and $0.00 shall be disclosed under paragraph (h)(5) of this section.

(ii) If the calculation under this paragraph (h)(5) yields an amount that is a negative number, such amount shall be disclosed under paragraph (h)(5) of this section as a negative number, and $0.00 shall be disclosed under paragraph (h)(3)(ii) of this section.

(iii) If the calculation under this paragraph (h)(5) of this section yields $0.00, then $0.00 shall be disclosed pursuant to paragraph (h)(3)(ii) of this section and pursuant to paragraph (h)(5) of this section.

(6) *Seller credits.* Seller credits are the total amount of money that the seller will provide to pay for total loan costs as determined by paragraph (f)(4) of this section and total other costs as determined by paragraph (g)(5) of this section, to the extent known, disclosed as a negative number;

(7) *Adjustments and other credits.* Other credits include all loan costs and other costs, to the extent known, that are paid by persons other than the loan originator, creditor, consumer, or seller, disclosed as a negative number; and

(8) *Estimated Cash to Close.* The total of the amounts disclosed by paragraphs (h)(1) thorough (h)(7).

(i) *Adjustable payment table.* If the periodic principal and interest payment may change after consummation but not based on an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in § 1026.37(a)(10)(ii)(E), a separate table under the master heading ''Closing Cost Details'' required by paragraph (f) of this section and under the heading ''Adjustable Payment (AP) Table'' that includes the following information and satisfies the following requirements:

(1) *Interest-only payments.* Whether the transaction is an interest only product pursuant to paragraph (a)(10)(ii)(B) of this section as an affirmative or negative answer to the question ''Interest Only Payments?'' and, if an affirmative answer is disclosed, the period during which interest-only periodic payments are scheduled.

(2) *Optional payments.* Whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment other than the scheduled amount of the payment, as an affirmative or negative answer to the question ''Optional Payments?'' and, if an affirmative answer is disclosed, the

period during which the consumer may elect to make such payments.

(3) *Step payments.* Whether the transaction is a step payment product pursuant to paragraph (a)(10)(ii)(C) of this section as an affirmative or negative answer to the question ''Step Payments?'' and, if an affirmative answer is disclosed, the period during which the regular periodic payments are scheduled to increase.

(4) *Seasonal payments.* Whether the transaction is a seasonal payment product pursuant to paragraph (a)(10)(ii)(E) of this section as an affirmative or negative answer to the question ''Seasonal Payments?'' and, if an affirmative answer is disclosed, the period during which periodic payments are not scheduled.

(5) *Principal and interest payments.* Under the subheading ''Principal and Interest Payments,'' which subheading is immediately preceded by the applicable unit period, the following information:

(i) The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation disclosed under this paragraph (i), counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment, labeled, ''First Change/Amount'';

(ii) The frequency of subsequent changes to the periodic principal and interest payment; and

(iii) The maximum periodic principal and payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation.

(j) *Adjustable interest rate table.* If the interest rate may increase after consummation, a separate table under the master heading ''Closing Cost Details'' required by paragraph (f) of this section and under the heading ''Adjustable Interest Rate (AIR) Table'' that includes the following information and satisfies the following requirements:

(1) *Index and margin.* If the interest rate may adjust, the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate, if any, labeled ''Index + Margin.''

(2) *Increases in interest rate.* If the product type is a ''Step Rate'' and not also an ''Adjustable Rate'' under paragraph (a)(10) of this section, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined, labeled ''Interest Rate Adjustments.''

(3) *Initial interest rate.* The interest rate at consummation of the loan transaction.

(4) *Minimum and maximum interest rate.* The minimum and maximum interest rates for the loan, after any introductory period expires.

(5) *Frequency of adjustments.* The following information, under the subheading ''Change Frequency'':

(i) The month when the interest rate after consummation may first change, calculated from the date interest begins to accrue for the first regular periodic principal and interest payment, labeled ''First Change''; and

(ii) The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled, ''Subsequent Changes.''

(6) *Limits on interest rate changes.* The following information, under the subheading ''Limits on Interest Rate Changes'':

(i) The maximum possible change for the first adjustment of the interest rate after consummation, labeled ''First Change''; and

(ii) The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled ''Subsequent Changes.''

(k) *Contact information.* Under the master heading, ''Additional Information About This Loan,'' the following information:

(1) The name and Nationwide Mortgage Licensing System and Registry identification number (NMLSR ID) (labeled ''NMLS ID/License #'') for the creditor (labeled ''Lender'') and the mortgage broker (labeled ''Mortgage Broker''), if any, together with the name of a primary contact for the consumer of the lender or mortgage broker. In the event the creditor or the mortgage broker has not been assigned an NMLSR ID, 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 shall be disclosed, if any;

(2) The name and NMLSR ID of the individual loan officer (labeled ''Loan Officer'' and ''NMLS ID/License #,'' respectively) who is primary contact for the consumer. In the event the individual loan officer has not been assigned an NMLSR ID, 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 shall be disclosed, if any; and

(3) The email address and telephone number of the loan officer (labeled ''Email'' and ''Phone,'' respectively).

(l) *Comparisons.* Under the master heading, ''Additional Information About This Loan,'' in a separate table under the heading ''Comparisons'' along with the statement ''Use these measures to compare this loan with other loans'':

(1) *In five years.* Using the label ''In 5 Years'':

(i) 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''; and

(ii) The 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.''

(2) *Annual percentage rate.* The ''Annual Percentage Rate,'' using that term and the abbreviation ''APR'' and expressed as a percentage, and the following statement: ''Your costs over the loan term expressed as a rate. This is not your interest rate.''

(3) *Total interest percentage.* The ''Total Interest Percentage,'' using that term and the abbreviation ''TIP'' and expressed as a percentage, and the statement ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.'' 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 amount of credit extended.

(m) *Other considerations.* Under the master heading ''Additional Information About This Loan'' required by paragraph (k) of this section and under the heading ''Other Considerations'':

(1) *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, a statement, labeled ''Appraisal,'' that:

(i) The creditor may order an appraisal to determine the value of the property identified in paragraph (a)(6) of this section and may charge the consumer for that appraisal;

(ii) The creditor will promptly provide the consumer a copy of any completed appraisal, even if the transaction is not consummated; and

(iii) The consumer may choose to pay for an additional appraisal of the property for the consumer's use.

(2) *Assumption.* A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled ''Assumption.''

(3) *Homeowner's insurance.* At the option of the creditor, 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.''

(4) *Late payment.* A statement detailing 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 must be late to trigger the late payment fee, labeled ''Late Payment.''

(5) *Refinance.* The following statement, labeled ''Refinance,'' ''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.''

(6) *Servicing.* A statement of whether the loan will be serviced by the creditor or transferred to another servicer, labeled ''Servicing.''

(7) *Liability after foreclosure.* If the purpose of the credit transaction is to refinance an extension of credit as described in paragraph (a)(9)(ii) of this section, a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost, 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.''

(n) *Signature statement.* (1) At the creditor's option, under the master heading required by paragraph (k) of this section and under the heading ''Confirm Receipt,'' a line for the signatures of the consumers in the transaction. If the creditor includes a line for the consumer's signature, the creditor must disclose the following below the signature line: ''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.''

(2) If the creditor does not include a line for the consumer's signature, the creditor must disclose the following statement under the heading ''Other Considerations'' required by paragraph (m) of this section, labeled ''Loan Acceptance'': ''You do not have to accept this loan because you have received this form or signed a loan application.''

(o) *Form of disclosures.* (1) *General requirements.* (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall 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.

(ii) Except as provided in paragraph (o)(5) of this section, the disclosures shall contain only the information required by paragraphs (a) through (n) of this section and 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, set forth in appendix H to this part.

(2) *Estimated disclosures.* If a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' in form H–24, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated.''

(3) *Form.* Except as provided in paragraph (o)(5) of this section: (i) For a transaction subject to this section that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H–24, set forth in appendix H to this part.

(ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H–24, set forth in appendix H to this part.

(iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(4) *Rounding.* (i) *Nearest dollar.* (A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall be disclosed as an exact number, except that decimal places shall not be disclosed if the amount of cents is zero.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) of this section shall be disclosed as an exact number up to two or three decimal places. The percentage amount required to be disclosed under paragraph (l)(2) of this section shall be disclosed up to three decimal places. Decimal places shall not be disclosed if the amount is a whole number.

(5) *Exceptions.* (i) *Unit-period.* Wherever the form or this section uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Lender credits.* The amount required to be disclosed by paragraph (d)(4) of this section may be omitted from the form if the amount is zero.

(iii) *Logo or slogan.* The creditor providing the form may use a logo for, and include a slogan with, the information required by paragraph (a)(3) of this section in any font size or type, provided that such logo or slogan does not cause the information required by paragraph (a)(3) of this section to exceed the space provided for that information, as illustrated in form H–24(a) in appendix H to this part. If the creditor does not use a logo for the information required by paragraph (a)(3) of this section, the information shall be disclosed in a similar format as form H–24.

(iv) *Business card.* The creditor may physically attach a business card over the information required to be disclosed by paragraph (a)(3) of this section.

(v) *Administrative information.* The creditor may insert immediately above the information required to be disclosed by paragraph (a)(2) of this section and adjacent to the information required to be disclosed by paragraph (a)(3) of this section any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H–24 of appendix H to this part for the information required by paragraph (a)(3) of this section is not altered.

(vi) *Translation.* The form may be translated into languages other than English.◄

18. New § 1026.38 is added to read as follows:

►§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

For each transaction subject to § 1026.19(f), the creditor shall disclose the information in this section, as applicable:

(a) *General information.* (1) *Form title.* The title of the form, ''Closing Disclosure,'' using that term.

(2) *Form purpose.* The following statement: ''This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.''

(3) *Closing information.* Under the heading ''Closing Information'':

(i) *Date issued.* The date the disclosures required by this section are delivered to the consumer, labeled ''Date Issued.''

(ii) *Closing date.* The date of consummation, labeled ''Closing Date.''

(iii) *Disbursement date.* The date the amounts disclosed pursuant to paragraphs (j)(3)(iii) and (k)(3)(iii) of this section are expected to be paid to the consumer and seller, respectively, as applicable, labeled ''Disbursement Date.''

(iv) *Agent.* The name of the settlement agent conducting the closing, labeled ''Agent.''

(v) *File number.* The number assigned to the transaction by the settlement agent for identification purposes, labeled ''File #.''

(vi) *Property.* The street address or location of the property required to be disclosed under § 1026.37(a)(6), labeled ''Property.''

(vii) *Sale price.* (A) In credit transactions where there is a seller, the contract sale price of the property identified in paragraph (a)(3)(vi) of this section, labeled ''Sale Price.''

(B) In credit transactions where there is no seller, the appraised value of the property identified in paragraph (a)(3)(vi) of this section, labeled ''Appraised Prop. Value.''

(4) *Transaction information.* Under the heading ''Transaction Information'':

(i) *Borrower.* The consumer's name and mailing address, labeled ''Borrower.''

(ii) *Seller.* Where applicable, the seller's name and mailing address, labeled ''Seller.''

(iii) *Lender.* The name of the creditor making the disclosure, labeled ''Lender.''

(5) *Loan information.* Under the heading ''Loan Information'':

(i) *Loan term.* The information required to be disclosed under § 1026.37(a)(8), labeled ''Loan Term.''

(ii) *Purpose.* The information required to be disclosed under § 1026.37(a)(9), labeled ''Purpose.''

(iii) *Product.* The information required to be disclosed under § 1026.37(a)(10), labeled ''Product.''

(iv) *Loan type.* The information required to be disclosed under § 1026.37(a)(11), labeled ''Loan Type.''

(v) *Loan identification number.* The information required to be disclosed under § 1026.37(a)(12), labeled ''Loan ID #.''

(vi) *Mortgage insurance case number.* The case number for any mortgage insurance policy, if required by the creditor, labeled ''MIC #.''

(b) *Loan terms.* A separate table under the heading ''Loan Terms'' that includes the information required by § 1026.37(b).

(c) *Projected payments.* A separate table, under the heading ''Projected Payments,'' that includes and satisfies the following information and requirements:

(1) *Projected payments or range of payments.* The information required to be disclosed pursuant to § 1026.37(c)(1) through (4), other than § 1026.37(c)(4)(vi). In disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure:

(i) For transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17;

(ii) 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).

(2) *Estimated taxes, insurance, and assessments.* A reference to the disclosure required by § 1026.38(l)(7).

(d) *Cash to close.* In a separate table, under the heading ''Cash to Close'':

(1) The sum of the dollar amounts calculated in accordance with paragraph (j)(3)(iii) of this section, labeled ''Cash to Close'';

(2) The dollar amount of loan costs that are disclosed as borrower-paid at closing calculated in accordance with paragraph (f)(4) of this section, described as ''Loan Costs'';

(3) The dollar amount of other costs that are disclosed as borrower-paid at closing and calculated in accordance with paragraph (g)(5) of this section, described as ''Other Costs'';

(4) The dollar amount disclosed pursuant to paragraph (h)(3) of this section, described as ''Lender Credit'';

(5) The sum of the amounts disclosed pursuant to paragraphs (d)(2), (d)(3), and (d)(4) of this section, described as ''Closing Costs''; and

(6) A statement referring the consumer to the tables required pursuant to paragraphs (f) and (g) of this section for details.

(e) [Reserved]

(f) *Closing cost details; loan costs.* Under the master heading ''Closing Cost Details'' with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading ''Loan Costs.'' The table consists of the items and amounts listed under five labels, described in paragraphs (f)(1) through (5) of this section.

(1) *Origination charges.* Under the label ''Origination Charges,'' an itemization of the items described in § 1026.37(f)(1) and compensation paid by the creditor to a loan originator in the applicable column and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(2) *Services borrower did not shop for.* Under the label ''Services Borrower Did Not Shop For,'' an itemization of the costs for services required by the creditor and provided by persons other than the creditor or mortgage broker in the applicable column, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) when the consumer was provided a written list under § 1026.19(e)(1)(vi)(C) and the consumer selected a provider contained on that written list.

(3) *Services borrower did shop for.* Under the label ''Services Borrower Did Shop For,'' an itemization of the costs for services required by the creditor and provided by persons other than the creditor or mortgage broker where the consumer was provided a written list under § 1026.19(e)(1)(vi)(C) and the consumer did not select a provider contained on that written list, and the total of all such itemized costs that are designated borrower-paid at or before closing.

(4) *Total loan costs.* The total of the amounts disclosed under § 1026.38(f)(5) with the label ''Total Loan Costs (Borrower-Paid).''

(5) *Subtotal of loan costs.* The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1), (2), and (3) of this section for costs designated borrower-paid at or before closing, with the label ''Loan Costs Subtotal.''

(g) *Closing cost details; other costs.* Under the master heading ''Closing Cost Details'' disclosed pursuant to paragraph (f) of this section, all other costs associated with the transaction listed in a table with a heading disclosed as ''Other Costs.'' The table comprises items and amounts listed under five labels, described in paragraphs (g)(1) through (6) of this section.

(1) *Taxes and other government fees.* Under the label ''Taxes and Other Government Fees,'' each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

(i) Recording fees and the amounts paid in the applicable columns; and

(ii) An itemization of transfer taxes and the amounts paid in the applicable columns.

(2) *Prepaids.* Under the subheading ''Prepaids,'' the charges disclosed pursuant to § 1026.37(g)(2) with the actual costs in the applicable columns, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(3) *Initial escrow payment at closing.* Under the label ''Initial escrow payment at closing,'' the items described in § 1026.37(g)(3) with their actual costs, the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2), and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(4) *Other.* Under the label ''Other,'' identify and state any other actual costs for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(i) For any actual cost that is a component of title insurance, the introductory description ''Title—'' shall appear at the beginning of the label for that actual cost.

(ii) The parenthetical description ''(optional)'' shall appear at the end of the label for actual costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(5) *Total other costs.* With the label ''Total Other Costs (Borrower-Paid),'' the sum of the amounts disclosed pursuant to paragraphs (g)(6) of this section.

(6) *Subtotal of costs.* The sum of other costs, calculated by totaling the costs disclosed in paragraphs (g)(1) through (4) of this section designated borrower-paid at or before closing, labeled ''Other Costs Subtotal.''

(h) *Closing cost totals.* (1) The total of the costs designated borrower-paid at or before closing that are disclosed pursuant to paragraph (h)(2) of this section, labeled ''Total Closing Costs (Borrower-Paid).''

(2) The total of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section and the total of the costs designated seller-paid at or before closing, or paid by others are disclosed pursuant to paragraphs (f) and (g) of this section, and the sum of the amount disclosed in (h)(3) of this section and the amounts designated borrower-paid at closing, labeled ''Closing Costs Subtotal (Loan Costs + Other Costs).''

(3) The amount disclosed pursuant to § 1026.37(g)(6)(ii) as a negative number, with the label ''Lender Credit'' and designated borrower-paid at closing.

(4) The creditor must use descriptions for the charges disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure in a manner that are consistent with the descriptions used for the charges disclosed on the Loan Estimate pursuant to § 1026.37 of this part. The creditor must also list the charges on the Closing Disclosure in the same sequential order as on the Loan Estimate pursuant to § 1026.37.

(i) *Calculating cash to close.* In a separate table, under the heading ''Calculating Cash to Close,'' together with the statement ''Use this table to see what has changed from your Loan Estimate'':

(1) *Total closing costs.* (i) Under the subheading ''Estimate,'' the ''Total Closing Costs'' disclosed on the Loan Estimate under § 1026.37(h)(1), labeled using that term together with a reference to the disclosure of ''Total Closing Costs'' under paragraph (h)(1) of this section.

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (h)(1) of this section, reduced by the amount of any lender credits disclosed under § 1026.38(h)(3).

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(1)(ii) of this section is different than the amount disclosed under paragraph (i)(1)(i) of this section (unless the difference is due to rounding):

(*1*) A statement of that fact;

(*2*) If the difference in the ''Total Closing Costs'' is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(ii) and (iii).

(B) If the amount disclosed under paragraph (i)(1)(ii) of this section is equal to the amount disclosed under paragraph (i)(1)(i) of this section, a statement of that fact.

(2) *Closing costs subtotal paid before closing.* (i) Under the subheading ''Estimate,'' the dollar amount ''$0,'' labeled ''Closing Costs Subtotal Paid Before Closing.''

(ii) Under the subheading ''Final,'' the amount of ''Total Closing Costs'' disclosed under paragraph (h)(2) of this section and designated as borrower-paid before closing, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(2)(ii) of this section is different than the amount disclosed under paragraph (i)(2)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

(B) If the amount disclosed under paragraph (i)(2)(ii) of this section is equal to the amount disclosed under paragraph (i)(2)(i) of this section, a statement of that fact.

(3) *Closing costs financed.* (i) Under the subheading ''Estimate,'' the amount disclosed under § 1026.37(h)(2), labeled ''Closing Costs Financed.''

(ii) Under the subheading ''Final,'' the actual amount of the closing costs that are to be paid out of loan proceeds, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(3)(ii) of this section is different than the amount disclosed under paragraph (i)(3)(i) of this section (unless the difference is due to rounding), a statement that the amount is different, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or

(B) If the amount disclosed under paragraph (i)(3)(ii) of this section is equal to the amount disclosed under paragraph (i)(3)(i) of this section, a statement of that fact.

(4) *Downpayment/funds from borrower.* (i) Under the subheading ''Estimate,'' the amount disclosed under § 1026.37(h)(3), labeled ''Downpayment/Funds from Borrower.''

(ii) Under the subheading ''Final'':

(A) In a transaction that is a purchase as defined in § 1026.37(a)(9)(i), 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, labeled using the term ''Downpayment/Funds from Borrower''; or

(B) In a transaction other than the one described in paragraph (i)(4)(ii)(A) of this section, the ''Funds from Borrower'' as determined in accordance with paragraph (i)(6)(iv) of this section, labeled using the term ''Downpayment/Funds from Borrower.''

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(4)(ii) of this section is different than the amount disclosed under paragraph (i)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment and that the consumer should see the details disclosed under paragraph (j)(1) or (j)(2) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(4)(ii) of this section is equal to the amount disclosed under paragraph (i)(4)(i) of this section, a statement of that fact.

(5) *Deposit.* (i) Under the subheading ''Estimate,'' the amount disclosed under § 1026.37(h)(4), labeled ''Deposit.''

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(5)(ii) of this section is different than the amount disclosed under paragraph (i)(5)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under paragraph (j)(2)(ii) of this section; or

(B) If the amount disclosed under paragraph (i)(5)(ii) of this section is equal to the amount disclosed under paragraph (i)(5)(i) of this section, a statement of that fact.

(6) *Funds for borrower.* (i) Under the subheading ''Estimate,'' the amount disclosed under § 1026.37(h)(5), labeled ''Funds for Borrower.''

(ii) Under the subheading ''Final,'' the ''Funds for Borrower,'' labeled using that term, as determined in accordance with paragraph (i)(6)(iv) of this section.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(6)(ii) of this section is different than the amount disclosed under paragraph (i)(6)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable; or

(B) If the amount disclosed under paragraph (i)(6)(ii) of this section is equal to the amount disclosed under paragraph (i)(6)(i) of this section, a statement of that fact.

(iv) The ''Funds from Borrower'' to be disclosed under paragraph (i)(4)(ii)(B) of this section and ''Funds for Borrower'' to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (i)(3)(ii) of this section) 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)).

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(B) of this section, and $0.00 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and $0.00 shall be disclosed under paragraph (i)(4)(ii)(B) of this section.

(C) If the calculation under this paragraph (i)(6)(iv) yields $0.00, $0.00 shall be disclosed under paragraph (i)(4)(ii)(B) of this section and under paragraph (i)(6)(ii) of this section.

(7) *Seller credits.* (i) Under the subheading ''Estimate,'' the amount disclosed under § 1026.37(h)(6), labeled ''Seller Credits.''

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (j)(2)(v) of this section, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraph (j)(2)(v) of this section; or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) *Adjustments and other credits.* (i) Under the subheading ''Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(7) rounded to the nearest whole dollar, labeled ''Adjustments and Other Credits.''

(ii) Under the subheading ''Final,'' the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(v) through (x) of this section reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(v) through (x) and (j)(2)(vi) through (xi) of this section; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

(9) *Cash to close.* (i) Under the subheading ''Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(8), labeled ''Cash to Close'' and disclosed more prominently than the other disclosures under this paragraph (i).

(ii) Under the subheading ''Final,'' the sum of the amounts disclosed under paragraphs (i)(1) through (i)(8) of this section, and disclosed more prominently than the other disclosures under this paragraph (i).

(j) *Summary of borrower's transaction.* Under the heading ''Summaries of Transactions,'' with a statement to ''Use this table to see a summary of your transaction,'' two separate tables are disclosed. The first

table shall include, under the subheading ''Borrower's Transaction,'' the following information and shall satisfy the following requirements:

(1) *Itemization of amount due from borrower.* (i) The total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by paragraph (j)(1)(ii) through (x) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled ''Due from Borrower at Closing'';

(ii) The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled ''Sale Price of Property'';

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (j)(1)(ii) of this section, labeled ''Sale Price of Any Personal Property Included in Sale'';

(iv) The total amount of closing costs disclosed that are designated borrower-paid at closing, calculated pursuant to paragraph (h)(1) of this section, the labeled ''Subtotal Closing Costs Paid at Closing by Borrower'';

(v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;

(vi) The description ''Adjustments for Items Paid by Seller in Advance'';

(vii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled ''City/Town Taxes'';

(viii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled ''County Taxes'';

(ix) The time period that the consumer is responsible for reimbursing the seller for any prepaid assessments, and the prorated amount of any prepaid assessments due from the consumer at the real estate closing, labeled ''Assessments''; and

(x) A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing.

(2) *Itemization of amounts already paid by or on behalf of borrower.* (i) The sum of the amounts disclosed in this paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled ''Paid Already by or on Behalf of Borrower at Closing'';

(ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of real estate, labeled ''Deposit'';

(iii) The amount of the consumer's new loan or first user loan as disclosed pursuant to paragraph (b)(1) of this section, labeled ''Borrower's Loan Amount'';

(iv) The amount of those existing loans assumed or taken subject to by the consumer, labeled ''Existing Loan(s) Assumed or Taken Subject to'';

(v) The total amount of money that the seller will provide at the real estate closing as a lump sum to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled ''Seller Credit'';

(vi) The amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to paragraphs (f), (g), (h), and (j)(2) of this section, labeled ''Other Credits'';

(vii) The description ''Adjustments for Items Unpaid by Seller'';

(viii) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled ''City/Town Taxes'';

(ix) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled ''County Taxes'';

(x) The time period that the seller is responsible for the payment of any unpaid assessments, and the prorated amount of any unpaid assessments due from the seller at the real estate closing, labeled ''Assessments''; and

(xi) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) *Calculation of borrower's transaction.* Under the label ''Calculation'':

(i) The amount disclosed pursuant to paragraph (j)(1)(i) of this section, labeled ''Total Due from Borrower at Closing'';

(ii) The amount disclosed pursuant to paragraph (j)(2)(i) of this section, disclosed as a negative number, labeled ''Total Paid Already by or on Behalf of Borrower at Closing''; and

(iii) A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed under paragraphs (j)(3)(i) and (j)(3)(ii) of this section, labeled ''Cash to Close.''

(4) *Items paid outside of closing funds.* (i) Costs that are not paid from closing funds but that would otherwise be disclosed in the table required pursuant to paragraph (j) of this section, should be marked with the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.'' and include the name of the party making the payment.

(ii) For purposes of this paragraph (j), ''closing funds'' means funds collected and disbursed at closing.

(k) *Summary of seller's transaction.* Under the heading required by paragraph (j) of this section, a second table under the subheading ''Seller's Transaction,'' that includes the following information and satisfies the following requirements:

(1) *Itemization of amounts due to seller.* (i) The total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraph (k)(1)(ii) through (ix) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled ''Due to Seller at Closing'';

(ii) The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled ''Sale Price of Property'';

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (k)(1)(ii) of this section, labeled ''Sale Price of Any Personal Property Included in Sale'';

(iv) A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to § 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing;

(v) The description ''Adjustments for Items Paid by Seller in Advance'';

(vi) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled ''City/Town Taxes'';

(vii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled ''County Taxes'';

(viii) The time period that the consumer is responsible for reimbursing the seller for any prepaid assessments, and the prorated amount of any prepaid assessments due from the consumer at the real estate closing, labeled ''Assessments''; and

(ix) A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing.

(2) *Itemization of amounts due from seller.* (i) The total amount due from the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraph (k)(2)(ii) through (xiii) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled ''Due from Seller at Closing'';

(ii) The amount of any excess deposit retained by the seller at the time of the real estate closing, labeled ''Excess Deposit'';

(iii) The amount of closing costs designated seller-paid at closing disclosed pursuant to paragraph (h)(1) of this section, labeled ''Subtotal Closing Costs Paid at Closing by Seller'';

(iv) The amount of those existing loans assumed or taken subject to at the real estate closing by the consumer, labeled ''Existing Loan(s) Assumed or Taken Subject to'';

(v) The amount of any first loan secured by the property that will be paid off as part of the real estate closing, labeled ''Payoff of First Mortgage Loan'';

(vi) The amount of any second loan secured by the property that will be paid off as part of the real estate closing, labeled ''Payoff of Second Mortgage Loan'';

(vii) The total amount of money that the seller will provide at the real estate closing as a lump sum to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled ''Seller Credit'';

(viii) A description and amount of any and all other obligations required to be paid by the seller at the real estate closing, including any lien-related payoffs, fees, or obligations;

(ix) The description ''Adjustments for Items Unpaid by Seller'';

(x) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled ''City/Town Taxes'';

(xi) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled ''County Taxes'';

(xii) The time period that the seller is responsible for the payment of any unpaid assessments, and the prorated amount of any unpaid assessments due from the seller at the real estate closing, labeled ''Assessments''; and

(xiii) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) *Calculation of seller's transaction.* Under the label ''Calculation'':

(i) The amount described in paragraph (k)(1)(i) of this section, labeled ''Total Due to Seller at Closing'';

(ii) The amount described in paragraph (k)(2)(i) of this section, disclosed as a negative number, labeled ''Total Due from Seller at Closing''; and

(iii) A statement that the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing, calculated by the sum of the amounts disclosed pursuant to paragraphs (k)(3)(i) and (k)(3)(ii) of this section, labeled ''Cash.''

(4) *Items paid outside of closing funds.* (i) Charges that are not paid from closing funds but that would otherwise be disclosed in the table described in paragraph (k) of this section, should be marked with the phrase ''Paid Outside of Closing'' or the acronym ''P.O.C.'' and include a statement of the party making the payment.

(ii) For purposes of this paragraph (k), ''closing funds'' are defined as funds collected and disbursed at closing.

(l) *Loan disclosures.* Under the master heading ''Additional Information About This Loan'' and under the heading ''Loan Disclosures'':

(1) *Assumption.* Under the subheading ''Assumption,'' the information required by § 1026.37(m)(2).

(2) *Demand feature.* Under the subheading ''Demand Feature,'' a statement of whether the legal obligation permits the creditor to demand early repayment of the loan and, if the statement is affirmative, a reference to the note or other loan contract for details.

(3) *Late payment.* Under the subheading ''Late Payment,'' the information required by § 1026.37(m)(4).

(4) *Negative amortization.* Under the subheading ''Negative Amortization (Increase in Loan Amount),'' a statement of whether the regular periodic payments may cause the principal balance to increase.

(i) If the regular periodic payments do not cover all of the interest due, the creditor must provide a statement that the principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer's equity in the property.

(ii) If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor must provide a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than the original loan amount and the increases in the principal balance lower the consumer's equity in the property.

(5) *Partial payment policy.* Under the subheading ''Partial Payment Policy'':

(i) A statement whether the creditor 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; and

(ii) If partial payments are permitted, a brief description of the creditor's partial payment policy, including the manner and order in which the partial payment would be applied to the principal, interest, or an escrow account for partial payments and whether any penalties apply.

(6) *Security interest.* Under the subheading ''Security Interest,'' a statement that the creditor will acquire a security interest in the property securing the transaction, the property address, and a statement that the consumer may lose the property if the consumer does not make the required payments or satisfy other requirements under the legal obligation.

(7) *Escrow account.* Under the subheading ''Escrow Account'':

(i) Under the reference ''For now,'' a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish, at or before consummation, an escrow account in connection with the transaction for the costs that will be paid using escrow account funds described in paragraph (l)(7)(i)(A)(*1*) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled ''Escrow'' that contains, if an escrow account is or will be established, an itemization of the following:

(*1*) 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 of each such charge, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(*4*) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(*2*) 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 of each such charge and a statement that the consumer may have to pay other costs that are not listed;

(*3*) The total amount disclosed pursuant to paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled ''Initial Payment,'' and a reference to the information disclosed pursuant to paragraph (g)(3) of this section;

(*4*) 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.''

(*5*) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) of this section 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.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and 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 the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled ''Escrow Waiver Fee.''

(ii) Under the reference ''In the future'':

(A) A statement that the consumer's property costs may change and that, as a result, the consumer's escrow payments may change;

(B) A statement that the consumer may be able to cancel any escrow account that has been established, but that the consumer is responsible for directly paying all property costs in the absence of an escrow account; and

(C) A description 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 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 what the consumer could obtain directly.

(m) *Adjustable payment table.* Under the master heading ''Additional Information About This Loan'' required by paragraph (l) of this section, and under the heading ''Adjustable Payment (AP) Table,'' the table required to be disclosed by § 1026.37(i).

(n) *Adjustable interest rate table.* Under the master heading ''Additional Information About This Loan'' required by paragraph (l) of this section, and under the heading ''Adjustable Interest Rate (AIR) Table,'' the table required to be disclosed by § 1026.37(j).

(o) *Loan calculations.* In a separate table under the heading ''Loan Calculations'':

(1) *Total of payments.* The ''Total of Payments,'' using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

(2) *Finance charge.* The ''Finance Charge,'' using that term and expressed as a dollar amount, and the following statement: ''The dollar amount the loan will cost you.'' The disclosed finance charge and other disclosures affected by the disclosed financed charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) is understated by no more than $100; or

(ii) is greater than the amount required to be disclosed.

(3) *Amount financed.* The ''Amount Financed,'' using that term and expressed as a dollar amount, and the following statement: ''The loan amount available after paying your upfront finance charge.''

(4) *Annual percentage rate.* The ''Annual Percentage Rate,'' using that term and the abbreviation ''APR'' and expressed as a percentage, and the following statement: ''Your costs over the loan term expressed as a rate. This is not your interest rate.''

(5) *Total interest percentage.* The ''Total Interest Percentage,'' using that term and the abbreviation ''TIP'' and expressed as a percentage, and the following statement: ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.''

(6) *Approximate cost of funds.* The ''Approximate Cost of Funds,'' using that term and the abbreviation ''ACF'' and expressed as a percentage, and the following statement: ''The approximate cost of funds used to make this loan. This is not a direct cost to you.'' For purposes of this paragraph (o)(6), ''approximate cost of funds'' means 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.

(p) *Other disclosures.* Under the heading ''Other Disclosures'':

(1) *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, under the subheading ''Appraisal,'' that:

(i) If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation; and

(ii) If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor

using the information disclosed pursuant to paragraph (r) of this section.

(2) *Contract details.* A statement 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 prepayment rebates and penalties, under the subheading ''Contract Details.''

(3) *Liability after foreclosure.* A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading ''Liability after Foreclosure.''

(4) *Refinance.* Under the subheading ''Refinance,'' the statement required by § 1026.37(m)(5).

(5) *Tax deductions.* Under the subheading ''Tax Deductions,'' a statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for Federal income tax purposes and a statement that the consumer should consult a tax adviser for further information.

(q) *Questions notice.* In a separate notice labeled ''Questions?'':

(1) A statement that the consumer should contact the creditor with any questions about the disclosures required pursuant to § 1026.19(f);

(2) A reference to the Bureau's Web site to obtain more information or to make a complaint; and

(3) A prominent question mark.

(r) *Contact information.* In a separate table, under the heading ''Contact Information,'' the following information for each creditor (under the subheading ''Lender''), mortgage broker (under the subheading ''Mortgage Broker''), consumer's real estate broker (under the subheading ''Real Estate Broker (B)''), seller's real estate broker (under the subheading ''Real Estate Broker (S)''), and closing agent (under the subheading ''Closing Agent'') participating in the transaction:

(1) Name of the person, labeled ''Name'';

(2) Address, using that label;

(3) Nationwide Mortgage Licensing System & Registry identification number or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, for the persons identified in paragraph (r)(1) of this section, labeled ''NMLS/License ID'';

(4) Name of the natural person who is the primary contact for the consumer with the person identified in paragraph (r)(1) of this section, labeled ''Contact'';

(5) Nationwide Mortgage Licensing System & Registry identification number or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, for the natural person identified in paragraph (r)(4) of this section, labeled ''Contact NMLS/License ID'';

(6) Email address for the person identified in paragraph (r)(4) of this section, labeled ''Email''; and

(7) Telephone number for the person identified in paragraph (r)(4) of this section, labeled ''Phone.''

(s) *Signature statement.* (1) At the creditor's option, under the heading ''Confirm Receipt,'' a line for the signatures of the consumers in the transaction. If the creditor provides a line for the consumer's signature, the creditor must disclose the statement required to be disclosed under § 1026.37(n)(1).

(2) If the creditor does not provide a line for the consumer's signature under the heading ''Other Disclosures'' required by paragraph (p) of this section, the statement required to be disclosed under § 1026.37(n)(2).

(t) *Form of disclosures.* (1) *General requirements.* (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall 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.

(ii) Except as provided in paragraph (t)(5), the disclosures shall contain only the information required by paragraphs (a) through (s) of this section and 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, set forth in appendix H to this part.

(2) *Estimated disclosures.* If a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' in form H–25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated.''

(3) *Form.* Except as provided in paragraph (t)(5) of this section:

(i) For a transaction subject to this section that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H–25, set forth in appendix H to this part.

(ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H–25, set forth in appendix H to this part.

(iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(4) *Rounding.* (i) *Nearest dollar.* The following dollar amounts are required to be rounded to the nearest whole dollar:

(A) The dollar amounts required to be disclosed by paragraph (b) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(b)(6) and (7);

(B) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(c)(1)(iii);

(C) The dollar amounts required to be disclosed by paragraph (i) of this section under the subheading ''Estimate'';

(D) The dollar amounts required to be disclosed by paragraph (m) of this section; and

(E) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(B) when disclosed under § 1026.37(c)(2)(iv).

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1)(i), (g)(2)(iii), (l), (n), and (o)(5) and (6) of this section shall be disclosed as an exact number up to two or three decimal places. The percentage amount required to be disclosed under paragraph (o)(4) of this section shall be disclosed up to three decimal places. Decimal places shall not be disclosed if the amount is a whole number.

(5) *Exceptions.* (i) *Unit-period.* Wherever the form or this section uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Lender credits.* The amount required to be disclosed by paragraph (d)(4) of this section may be omitted from the form if the amount is zero.

(iii) *Administrative information.* The creditor may insert immediately above the information required to be disclosed by paragraph (a)(2) of this section and adjacent to the information required to be disclosed by paragraph (a)(3) of this section any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form.

(iv) *Line numbers (Closing Cost Details).* Line numbers provided on form H–25 in Appendix H to this part for the disclosure of the information required by paragraphs (f)(1), (2), and (3) and (g)(1), (2), (3), and (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.

(v) *Additional page (Closing Cost Details).* The information required to be disclosed by paragraphs (f), (g), and (h) of this section may be disclosed on two pages if form H–25 in appendix H to this part, as altered pursuant to paragraph (t)(5)(iv) of this section, does not accommodate an itemization of all of the information required to be disclosed by paragraphs (f), (g), and (h) on one page, provided that the information required by paragraph (f) is disclosed on a page separate from the information required by paragraph (g). The information required by paragraph (g), if disclosed on a page separate from paragraph (f), shall be disclosed on the same page as the information required by paragraph (h).

(vi) *Separation of consumer and seller information.* The creditor or settlement agent preparing the form may use form H–25 in appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary:

(A) The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank. The information disclosed to the consumer pursuant to paragraph (j) of this section must be disclosed on the same page as the information required by paragraph (i) of this section.

(B) The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.

(C) The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.

(vii) *Modified version of the form for a seller or third-party.* The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f) and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H–25(I) in appendix H to this part.

(viii) *Transaction without a seller.* The following modifications to form H–25 in appendix H to this part may be made for a transaction that does not involve a seller, as illustrated by form H–25(J) in appendix H to this part:

(A) The information required by paragraphs (a)(4)(ii), (f), (g), and (h) with respect to costs paid by the seller, and (k) of this section may be deleted.

(B) A table under the master heading ''Closing Cost Details'' required by paragraph (f) of this section may be added with the heading ''Disbursements to Others'' that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the consumer; the payees of such disbursements under the subheading ''To''; and the total amount of such payments labeled ''Total Disbursements to Others.''

(C) The information required by paragraphs (i)(5), (7), and (8) of this section may be deleted from the table required by paragraph (i) of this section. These deletions must be factored into the calculation and disclosure required by paragraph (i)(9) of this section.

(D) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

(ix) *Translation.* The form may be translated into languages other than English.

(x) *Customary recitals and information.* An additional page may be attached to the form for the purpose of including customary recitals and information used locally in real estate settlements.◄

19. Section 1026.39 is amended by revising paragraphs (a)(2) and (d) and adding new paragraph (d)(5) to read as follows:

§ 1026.39 Mortgage transfer disclosures.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

* * * * *

(2) A ''*mortgage loan*'' means ►:

(i) An open-end consumer credit transaction that is secured by the principal dwelling of a consumer; and

(ii) A closed-end consumer credit transaction secured by a dwelling or real property.◄

* * * * *

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was sold, assigned or otherwise transferred, and state the following ►, except that the information required by paragraph (d)(5) of this section shall be stated only for a mortgage loan that is a closed-end consumer credit transaction other than a reverse mortgage transaction subject to § 1026.33 of this part◄:

* * * * *

►(5) The following statements, labeled ''Partial Payment Policy'':

(i) Whether the covered person will accept payments that are less than the amount due;

(ii) If such payments are accepted, a description of how the covered person will apply such payments to the amount due, including whether such payments will be placed in an escrow account; and

(iii) A statement that, if the loan is sold, the new covered person, using the term ''lender,'' may have a different policy.◄

* * * * *

20. Appendix D to part 1026 is amended by revising paragraph C of part II to read as follows:

Appendix D to Part 1026—Multiple Advance Construction Loans

* * * * *

Part II—Construction and Permanent Financing Disclosed as One Transaction

* * * * *

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1 of part II, ►other than loans that are subject to § 1026.19(e) and (f),◄ without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2 of part II ►and loans under paragraph A.1 of part II that are subject to § 1026.19(e) and (f)◄, including any payments of interest only that are made during the construction period.

* * * * *

21. Appendix H to part 1026 is amended by revising H–13 and H–15, adding new H–24 through H–27, and revising and adding their respective entries to the table of contents at the beginning of the appendix in numerical order as follows:

Appendix H to Part 1026—Closed-End [Model] Forms and Clauses

* * * * *

H–13 ►Closed-End◄ [Mortgage] Transaction With Demand Feature Sample

* * * * *

H–15 ►Closed-End◄ Graduated-Payment [Mortgage] ►Transaction◄ Sample

* * * * *

►H–24(A) Mortgage Loan Transaction Loan Estimate—Blank

H–24(B) Mortgage Loan Transaction Loan Estimate—Fixed-Rate Loan Sample

H–24(C) Mortgage Loan Transaction Loan Estimate—Interest Only Adjustable-Rate Loan Sample

H–24(D) Mortgage Loan Transaction Loan Estimate—Refinance Sample

H–24(E) Mortgage Loan Transaction Loan Estimate—Balloon Payment Sample

H–24(F) Mortgage Loan Transaction Loan Estimate—Negative Amortization Sample

H–25(A) Mortgage Loan Transaction Closing Disclosure—Blank

H–25(B) Mortgage Loan Transaction Closing Disclosure—Fixed-Rate Loan Sample

H–25(C) Mortgage Loan Transaction Closing Disclosure—Sample of Borrower Funds From Second-Lien Loan in Summaries of Transactions

H–25(D) Mortgage Loan Transaction Closing Disclosure—Sample of Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions

H–25(E) Mortgage Loan Transaction Closing Disclosure—Sample of Refinance Transaction

H–25(F) Mortgage Loan Transaction Closing Disclosure—Sample of Refinance Transaction (19(e)(3) violation)

H–25(G) Mortgage Loan Transaction Closing Disclosure—Sample of Refinance Transaction With Financed Closing Costs

H–25(H) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Cost Details

H–25(I) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Disclosure Provided to Seller

H–25(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller

H–26(A) Mortgage Loan Transaction—Pre-Loan Estimate Statement

H–26(B) Mortgage Loan Transaction—Pre-Loan Estimate Statement on Worksheet

H–27(A) Mortgage Loan Transaction—Written List of Providers

H–27(B) Mortgage Loan Transaction—Sample of Written List of Providers

H–27(C) Mortgage Loan Transaction—Sample of Written List of Providers With Services You Cannot Shop For◄

* * * * *

BILLING CODE 4810–25–P

H–13 ►Closed-End Transaction◄ [Mortgage] With Demand Feature Sample

Mortgage Savings and Loan Assoc.
Date: April 15, 1981

Glenn Jones
700 Oak Drive
Little Creek, USA

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
14.85 %	$156,551.54	$44,605.66	$201,157.20

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
360	$558.77	Monthly beginning 6/1/81

This obligation has a demand feature.

You may obtain property insurance from anyone you want that is acceptable to Mortgage Savings and Loan Assoc.. If you get the insurance from Mortgage Savings and Loan Assoc. you will pay $ 150-/year

Security: You are giving a security interest in:
☒ the goods or property being purchased.
☐ _____.

Late Charge: If a payment is late, you will be charged $ N/A 5 % of the payment.

Prepayment: If you pay off early, you may have to pay a penalty.

* * * * *

H–15 ►Closed-End◄ Graduated Payment ►Transaction◄ [Mortgage] Sample

Convenient Savings and Loan

Account number: 4862-88

Michael Jones
500 Walnut Court, Little Creek USA

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid after you have made all payments as scheduled
15.37 %	$177,970.44	$43,777	$221,548.44

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due	
12	$446.62	Monthly beginning	6/1/81
12	$479.67	" "	6/1/82
12	$515.11	" "	6/1/83
12	$553.13	" "	6/1/84
12	$593.91	" "	6/1/85
300	varying from $637.68 to $627.37	" "	6/1/86

Security: You are giving a security interest in the property being purchased.

Late Charge: If a payment is late, you will be charged 5% of the payment.

Prepayment: If you pay off early, you
☒ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

* * * * *

►H–24(A) Mortgage Loan Transaction Loan Estimate—Blank

Description: This is a blank Loan Estimate that illustrates the application of the content requirements in § 1026.37. This form provides two variations of page one, four variations of page two, and eight variations of page three, reflecting the variable content requirements in § 1026.37.

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
SALE PRICE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments		
Payment Calculation		
Principal & Interest Mortgage Insurance Estimated Escrow *Amount Can Increase Over Time*		
Estimated Total Monthly Payment		
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	**This estimate includes** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*	**In escrow?**

Cash to Close	
Estimated Cash to Close	Includes in Closing Costs (in Loan Costs + in Other Costs – in Lender Credits). See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
EST. PROP. VALUE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments	
Payment Calculation	
Principal & Interest Mortgage Insurance Estimated Escrow *Amount Can Increase Over Time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	**This estimate includes** **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*

Cash to Close	
Estimated Cash to Close	Includes in Closing Costs (in Loan Costs + in Other Costs – in Lender Credits). See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Included in Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Included in Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Included in Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Included in Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Confirm Receipt

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.

Applicant Signature	Date	Co-Applicant Signature	Date

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Confirm Receipt

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.

Applicant Signature	Date	Co-Applicant Signature	Date

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Liability after Foreclosure	Taking this loan could end any state law protection you may currently have against liability for unpaid debt if your lender forecloses on your home. If you lose this protection, you may be liable for debt remaining after foreclosure. You may want to consult a lawyer for more information.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Liability after Foreclosure	Taking this loan could end any state law protection you may currently have against liability for unpaid debt if your lender forecloses on your home. If you lose this protection, you may be liable for debt remaining after foreclosure. You may want to consult a lawyer for more information.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Confirm Receipt

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.

Applicant Signature	Date	Co-Applicant Signature	Date

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Liability after Foreclosure	Taking this loan could end any state law protection you may currently have against liability for unpaid debt if your lender forecloses on your home. If you lose this protection, you may be liable for debt remaining after foreclosure. You may want to consult a lawyer for more information.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

Confirm Receipt

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.

Applicant Signature	Date	Co-Applicant Signature	Date

Additional Information About This Loan

LENDER	MORTGAGE BROKER
NMLS/LICENSE ID	NMLS/LICENSE ID
LOAN OFFICER	LOAN OFFICER
NMLS ID	NMLS ID
EMAIL	EMAIL
PHONE	PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☐ will not allow this person to assume this loan on the original terms.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Liability after Foreclosure	Taking this loan could end any state law protection you may currently have against liability for unpaid debt if your lender forecloses on your home. If you lose this protection, you may be liable for debt remaining after foreclosure. You may want to consult a lawyer for more information.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☐ to transfer servicing of your loan.

LOAN ESTIMATE PAGE 3 OF 3 • LOAN ID #

H–24(B) Mortgage Loan Transaction Loan Estimate—Fixed-Rate Loan Sample

Description: This is an example of a completed Loan Estimate for a fixed-rate loan. This loan is for the purchase of property at a sale price of $180,000 and has a loan amount of $162,000, a 30-year loan term, and a fixed interest rate of 3.875 percent. The consumer has elected to lock the interest rate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance.

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED 7/23/2012
APPLICANTS John A. and Mary B.
123 Anywhere Street
Anytown, ST 12345
PROPERTY 456 Somewhere Avenue
Anytown, ST 12345
SALE PRICE $180,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT Fixed Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID # 123456789
RATE LOCK ☐ NO ☒ YES, until 9/21/12 at 5:00 p.m. EDT
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **8/6/12** *at 5:00 p.m. EDT*

Loan Terms		Can this amount increase after closing?
Loan Amount	$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$761.78	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 206	+ 206
Estimated Total Monthly Payment	$1,050	$968

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	$206 a month	☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☐ Other:	
		See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.	

Cash to Close

Estimated Cash to Close	$16,054	Includes $8,054 in Closing Costs ($5,672 in Loan Costs + $2,382 in Other Costs – $0 in Lender Credits). See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	$1,802
.25 % of Loan Amount (Points)	$405
Application Fee	$300
Underwriting Fee	$1,097

B. Services You Cannot Shop For	$672
Appraisal Fee	$405
Credit Report Fee	$30
Flood Determination Fee	$20
Flood Monitoring Fee	$32
Tax Monitoring Fee	$75
Tax Status Research Fee	$110

C. Services You Can Shop For	$3,198
Pest Inspection Fee	$135
Survey Fee	$65
Title – Insurance Binder	$700
Title – Lender's Title Policy	$535
Title – Title Search	$1,261
Title – Settlement Agent Fee	$502

D. TOTAL LOAN COSTS (A + B + C)	$5,672

Other Costs

E. Taxes and Other Government Fees	$85
Recording Fees and Other Taxes	$85
Transfer Taxes	$0

F. Prepaids	$867
Homeowner's Insurance Premium (6 months)	$605
Mortgage Insurance Premium (0 months)	$0
Prepaid Interest ($17.44 per day for 15 days @ 3.875%)	$262
Property Taxes (0 months)	$0

G. Initial Escrow Payment at Closing				$413
Homeowner's Insurance	$100.83	per month for	2 mo.	$202
Mortgage Insurance		per month for	mo.	
Property Taxes	$105.30	per month for	2 mo.	$211

H. Other	$1,017
Title – Owner's Title Policy (optional)	$1,017

I. TOTAL OTHER COSTS (E + F + G + H)	$2,382

J. TOTAL CLOSING COSTS	$8,054
D + I	$8,054
Lender Credits	$0

Calculating Cash to Close

Total Closing Costs (J)	$8,054
Closing Costs Financed (Included in Loan Amount)	$0
Down Payment/Funds from Borrower	$18,000
Deposit	– $10,000
Funds for Borrower	$0
Seller Credits	$0
Adjustments and Other Credits	$0
Estimated Cash to Close	$16,054

Additional Information About This Loan

LENDER	Ficus Bank	MORTGAGE BROKER	
NMLS/LICENSE ID		NMLS/LICENSE ID	
LOAN OFFICER	Joe Smith	LOAN OFFICER	
NMLS ID	12345	NMLS ID	
EMAIL	joesmith@ficusbank.com	EMAIL	
PHONE	123-456-7890	PHONE	

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	$56,582 Total you will have paid in principal, interest, mortgage insurance, and loan costs. $15,773 Principal you will have paid off.
Annual Percentage Rate (APR)	4.494% Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	69.447% The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☒ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☒ to transfer servicing of your loan.

Confirm Receipt

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.

Applicant Signature	Date	Co-Applicant Signature	Date

LOAN ESTIMATE PAGE 3 OF 3 • LOAN ID #123456789

H–24(C) Mortgage Loan Transaction Loan Estimate—Interest Only Adjustable-Rate Loan Sample

Description: This is an example of a completed Loan Estimate for an adjustable-rate loan with interest-only payments. This loan is for the purchase of property at a sale price of $240,000 and has a loan amount of $211,000 and a 30-year loan term. For the first five years of the loan term, the scheduled payments cover only interest and the loan has an adjustable interest rate that is fixed at 4.375 percent. After five years, the payments include principal and the interest rate adjusts every three years based on the value of the London Interbank Offered Rate plus a margin of 4.00 percent. The consumer has elected to lock the interest rate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance.

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED 1/21/2013
APPLICANTS James White and Jane Johnson
123 Anywhere Street, Apt 678
Anytown, ST 12345
PROPERTY 456 Somewhere Avenue
Anytown, ST 12345
SALE PRICE $240,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT 5 Year Interest Only, 5/3 Adjustable Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID # 123456789
RATE LOCK ☐ NO ☒ YES, until 3/22/2013 at 5:00 p.m. EST
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **2/4/2013** *at 5:00 p.m. EST*

Loan Terms		Can this amount increase after closing?	
Loan Amount	$211,000	NO	
Interest Rate	4.375%	YES	• Adjusts **every three years** starting in year 6 • Can go **as high as 8%** in year 9 • See **AIR table on page 2** for details
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$769.27	YES	• Adjusts **every three years** starting in year 6 • Can go **as high as $1,622** in year 9 • Includes **only interest** and **no principal** until year 6 • See **AP table on page 2** for details
		Does the loan have these features?	
Prepayment Penalty		NO	
Balloon Payment		NO	

Projected Payments

Payment Calculation	Years 1-5	Years 6-8	Years 9-11	Years 12-30
Principal & Interest	$769.27 *only interest*	$1,233 min $1,542 max	$1,233 min $1,622 max	$1,233 min $1,622 max
Mortgage Insurance	+ 107	+ 107	+ 107	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 533	+ 533	+ 533	+ 533
Estimated Total Monthly Payment	$1,409	$1,873 – $2,182	$1,873 – $2,262	$1,766 – $2,155

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	$533 a month	☒ Property Taxes ☒ Homeowner's Insurance ☐ Other:	YES YES

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Cash to Close

Estimated Cash to Close	$31,587	Includes $8,587 in Closing Costs ($4,527 in Loan Costs + $4,060 in Other Costs – $0 in Lender Credits). See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	**$2,850**
% of Loan Amount (Points)	$0
Application Fee	$400
Loan Origination Fee	$2,450

B. Services You Cannot Shop For	**$820**
Appraisal Fee	$305
Credit Report Fee	$30
Flood Determination Fee	$35
Lender's Attorney	$400
Tax Status Research Fee	$50

C. Services You Can Shop For	**$857**
Pest Inspection Fee	$125
Survey Fee	$150
Title – Lender's Title Policy	$132
Title – Settlement Agent Fee	$300
Title – Title Search	$150

D. TOTAL LOAN COSTS (A + B + C)	**$4,527**

Other Costs

E. Taxes and Other Government Fees	**$152**
Recording Fees and Other Taxes	$152
Transfer Taxes	$0
F. Prepaids	**$1,205**
Homeowner's Insurance Premium (12 months)	$1,000
Mortgage Insurance Premium (0 months)	$0
Prepaid Interest ($25.64 per day for 8 days @ 4.375%)	$205
Property Taxes (0 months)	$0

G. Initial Escrow Payment at Closing			**$1,067**
Homeowner's Insurance	$83.33	per month for 2 mo.	$167
Mortgage Insurance	$0	per month for 0 mo.	$0
Property Taxes	$450.00	per month for 2 mo.	$900

H. Other	**$1,636**
Title – Owner's Title Policy (optional)	$1,636

I. TOTAL OTHER COSTS (E + F + G + H)	**$4,060**

J. TOTAL CLOSING COSTS	**$8,587**
D + I	$8,587
Lender Credits	– $0

Calculating Cash to Close

Total Closing Costs (J)	$8,587
Closing Costs Financed (Included in Loan Amount)	$0
Down Payment/Funds from Borrower	$29,000
Deposit	– $5,000
Funds for Borrower	$0
Seller Credits	– $1,000
Adjustments and Other Credits	$0
Estimated Cash to Close	$31,587

Adjustable Payment (AP) Table

Interest Only Payments?	YES for your first 60 payments
Optional Payments?	NO
Step Payments?	NO
Seasonal Payments?	NO
Monthly Principal and Interest Payments	
First Change/Amount	$1,233 – $1,542 at 61st payment
Subsequent Changes	Every three years
Maximum Payment	$1,622 starting at 108th payment

Adjustable Interest Rate (AIR) Table

Index + Margin	LIBOR + 4%
Initial Interest Rate	4.375%
Minimum/Maximum Interest Rate	5%/8%
Change Frequency	
First Change	Beginning of 61st month
Subsequent Changes	Every 36th month after first change
Limits on Interest Rate Changes	
First Change	3%
Subsequent Changes	3%

Additional Information About This Loan

LENDER	Ficus Bank	**MORTGAGE BROKER**	Pecan Mortgage Broker Inc.
NMLS/LICENSE ID		**NMLS/LICENSE ID**	222222
LOAN OFFICER	Joe Smith	**LOAN OFFICER**	Jane Jones
NMLS ID	12345	**NMLS ID**	67890
EMAIL	jsmith@ficusbank.com	**EMAIL**	jjones@pecanmortgagebroker.com
PHONE	111-222-3333	**PHONE**	333-444-5555

Comparisons	**Use these measures to compare this loan with other loans.**	
In 5 Years	$57,324	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	$0	Principal you will have paid off.
Annual Percentage Rate (APR)	5.231%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	99.104%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations	
Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☒ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☒ to transfer servicing of your loan.

LOAN ESTIMATE PAGE 3 OF 3 • LOAN ID #123456789

H–24(D) Mortgage Loan Transaction Loan Estimate—Refinance Sample

Description: This is an example of a completed Loan Estimate for a transaction that is for a refinance and includes a prepayment penalty equal to 2.00 percent of the principal amount prepaid for the first two years after consummation of the transaction. The consumer estimated the balance of the existing loan to be $121,000.

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED	7/23/2012
APPLICANTS	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345
PROPERTY	123 Anywhere Street Anytown, ST 12345
EST. PROP. VALUE	$135,000

LOAN TERM	15 years
PURPOSE	Refinance
PRODUCT	Fixed Rate
LOAN TYPE	☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID #	123456789
RATE LOCK	☒ NO ☐ YES

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on: 8/6/2012 at 5:00 p.m. EDT

Loan Terms		Can this amount increase after closing?
Loan Amount	$121,000	NO
Interest Rate	3.375%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$857.60	NO
		Does the loan have these features?
Prepayment Penalty		YES • **As high as $2,420** if you pay off the loan during the first 2 years
Balloon Payment		NO

Projected Payments

Payment Calculation	Years 1-3	Years 4-15
Principal & Interest	$857.60	$857.60
Mortgage Insurance	+ 77	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 309	+ 309
Estimated Total Monthly Payment	$1,244	$1,167

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	$415 a month	☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☒ Other: HOA	NO

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Cash to Close

Estimated Cash to Close	$7,397	Includes $7,397 in Closing Costs ($4,385 in Loan Costs + $3,012 in Other Costs – $0 in Lender Credits). See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	$1,810
1 % of Loan Amount (Points)	$1,210
Origination Fee	$600

B. Services You Cannot Shop For	$535
Appraisal Fee	$250
Appraisal Management Company Fee	$200
Credit Report Fee	$40
Flood Determination Fee	$45

C. Services You Can Shop For	$2,040
Pest Inspection Fee	$100
Survey Fee	$125
Title – Search	$400
Title – Lender's Title Policy	$1,115
Title – Settlement Agent Fee	$300

D. TOTAL LOAN COSTS (A + B + C)	$4,385

Other Costs

E. Taxes and Other Government Fees	$1,555
Recording Fees and Other Taxes	$130
Transfer Taxes	$1,425

F. Prepaids	$687
Homeowner's Insurance Premium (6 months)	$519
Mortgage Insurance Premium (0 months)	$0
Prepaid Interest ($11.19 per day for 15 days @ 3.375%)	$168
Property Taxes (0 months)	$0

G. Initial Escrow Payment at Closing		$770
Homeowner's Insurance	$86.50 per month for 2 mo.	$173
Mortgage Insurance	$76.63 per month for 2 mo	$153
Property Taxes	$222.00 per month for 2 mo.	$444

H. Other	$0

I. TOTAL OTHER COSTS (E + F + G + H)	$3,012

J. TOTAL CLOSING COSTS	$7,397
D + I	$7,397
Lender Credits	$0

Calculating Cash to Close

Total Closing Costs (J)	$7,397
Closing Costs Financed (Included in Loan Amount)	$0
Down Payment/Funds from Borrower	$0
Deposit	$0
Funds for Borrower	$0
Seller Credits	$0
Adjustments and Other Credits	$0
Estimated Cash to Close	$7,397

Additional Information About This Loan

LENDER	Ficus Bank	MORTGAGE BROKER	Pecan Mortgage Broker Inc.
NMLS/LICENSE ID		NMLS/LICENSE ID	222222
LOAN OFFICER	Joe Smith	LOAN OFFICER	Jane Jones
NMLS ID	12345	NMLS ID	67890
EMAIL	joesmith@ficusbank.com	EMAIL	jjones@pecanmortgagebroker.com
PHONE	123-456-7890	PHONE	333-444-5555

Comparisons	Use these measures to compare this loan with other loans.	
In 5 Years	$58,461	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	$33,758	Principal you will have paid off.
Annual Percentage Rate (APR)	4.439%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	27.72%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☒ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Liability after Foreclosure	Taking this loan could end any state law protection you may currently have against liability for unpaid debt if your lender forecloses on your home. If you lose this protection, you may be liable for debt remaining after foreclosure. You may want to consult a lawyer for more information.
Refinance	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.
Servicing	We intend ☐ to service your loan. If so, you will make your payments to us. ☒ to transfer servicing of your loan.

H–24(E) Mortgage Loan Transaction Loan Estimate—Balloon Payment Sample

Description: This is an example of the information required by § 1026.37(a) through (c) for a transaction with a loan term of 7 years that includes a final balloon payment.

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED 7/23/2012
APPLICANTS John A. and Mary B.
123 Anywhere Street
Anytown, ST 12345
PROPERTY 456 Somewhere Avenue
Anytown, ST 12345
SALE PRICE $190,000

LOAN TERM 7 years
PURPOSE Purchase
PRODUCT Year 7 Balloon Payment Fixed Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID # 123456789
RATE LOCK ☐ NO ☒ YES, until 9/21/2012 at 5:00 p.m. EDT
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **8/6/2012** *at 5:00 p.m. EDT*

Loan Terms		Can this amount increase after closing?
Loan Amount	$171,000	NO
Interest Rate	4.375%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$853.78	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		YES • You will have to pay **$148,409.35** at the end of year 7

Projected Payments		
Payment Calculation	**Years 1–7**	**Final Payment**
Principal & Interest	$853.78	$148,409.35
Mortgage Insurance	+ 87	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 309	+ —
Estimated Total Monthly Payment	$1,250	$148,409.35

Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	$309 a month	**This estimate includes**	**In escrow?**
		☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☐ Other:	
		See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.	

H–24(F) Mortgage Loan Transaction Loan Estimate—Negative Amortization Sample

Description: This is an example of the information required by § 1026.37(a) and (b) for a transaction with negative amortization.

FICUS BANK

4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED	7/23/2012
APPLICANTS	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345
PROPERTY	456 Somewhere Avenue Anytown, ST 12345
SALE PRICE	$180,000

LOAN TERM	30 years
PURPOSE	Purchase
PRODUCT	4 year Negative Amortization 1/1 Adjustable Rate
LOAN TYPE	☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID #	123456789
RATE LOCK	☐ NO ☒ YES, until 9/21/2012 at 5:00 p.m. EDT *Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on* **8/6/2012** *at 5:00 p.m. EDT*

Loan Terms		Can this amount increase after closing?	
Loan Amount	$171,000	YES	• Can go **as high as $176,032** • Can **increase** until year 6
Interest Rate	2%	YES	• Adjusts **every year** starting in year 2 • Can go **as high as 7%** in year 10 • See **AIR table on page 2** for details
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$632.05	YES	• Adjusts **every year** starting in year 6 • Can go **as high as $1,227** in year 10 • See **AP table on page 2** for details
		Does the loan have these features?	
Prepayment Penalty		NO	
Balloon Payment		NO	

H–25(A) Mortgage Loan Transaction Closing Disclosure—Blank

Description: This is a blank Closing Disclosure that illustrates the content requirements in § 1026.38. This form provides two variations of page one, one page two, one page three, four variations of page four, and two variations of page five, reflecting the variable content requirements in § 1026.38. This form does not reflect modifications permitted under § 1026.38(t).

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose**
Disbursement Date		**Product**
Agent	**Seller**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____
Property		
	Lender	**Loan ID #**
Sale Price		**MIC #**

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments	
Payment Calculation	
Principal & Interest Mortgage Insurance Estimated Escrow *Amount Can Increase Over Time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	**This estimate includes** **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See page 4 for escrowed property costs. You must pay for other property costs separately.*

Cash to Close	
Cash to Close	Includes in Closing Costs (in Loan Costs + in Other Costs – in Lender Credits). See details on page 2.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose**
Disbursement Date		**Product**
Agent	**Lender**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____
Property		**Loan ID #**
Appraised Prop. Value		**MIC #**

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments	
Payment Calculation	
Principal & Interest Mortgage Insurance Estimated Escrow *Amount Can Increase Over Time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	**This estimate includes** — **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See page 4 for escrowed property costs. You must pay for other property costs separately.*

Cash to Close	
Cash to Close	Includes in Closing Costs (in Loan Costs + in Other Costs – in Lender Credits). See details on page 2.

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges					
01 % of Loan Amount (Points)					
02					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					

Other Costs					
E. Taxes and Other Government Fees					
01 Recording Fees Deed: Mortgage:					
02					
F. Prepaids					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest per day from to					
04 Property Taxes (mo.)					
05					
G. Initial Escrow Payment at Closing					
01 Homeowner's Insurance per month for mo.					
02 Mortgage Insurance per month for mo.					
03 Property Taxes per month for mo.					
04					
05					
06					
07					
08 Aggregate Adjustment					
H. Other					
01					
02					
03					
04					
05					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					

J. TOTAL CLOSING COSTS (Borrower-Paid)					
Closing Costs Subtotals (D + I)					
Lender Credits					

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Included in Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
Cash to Close			

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing

01 Sale Price of Property
02 Sale Price of Any Personal Property Included in Sale
03 Closing Costs Paid at Closing (J)
04
Adjustments
05
06
07
Adjustments for Items Paid by Seller in Advance
08 City/Town Taxes to
09 County Taxes to
10 Assessments to
11 HOA Dues to
12
13
14
15

L. Paid Already by or on Behalf of Borrower at Closing

01 Deposit
02 Borrower's Loan Amount
03 Existing Loan(s) Assumed or Taken Subject to
04
05 Seller Credit
Other Credits
06
07
Adjustments
08
09
10
11
Adjustments for Items Unpaid by Seller
12 City/Town Taxes to
13 County Taxes to
14 Assessments to
15
16
17

CALCULATION

Total Due from Borrower at Closing (K)
Total Paid Already by or on Behalf of Borrower at Closing (L)
Cash to Close ☐ From ☐ To Borrower

SELLER'S TRANSACTION

M. Due to Seller at Closing

01 Sale Price of Property
02 Sale Price of Any Personal Property Included in Sale
03
04
05
06
07
08
Adjustments for Items Paid by Seller in Advance
09 City/Town Taxes to
10 County Taxes to
11 Assessments to
12 HOA Dues to
13
14
15
16

N. Due from Seller at Closing

01 Excess Deposit
02 Closing Costs Paid at Closing (J)
03 Existing Loan(s) Assumed or Taken Subject to
04 Payoff of First Mortgage Loan
05 Payoff of Second Mortgage Loan
06
07
08 Seller Credit
09
10
11
12
13
Adjustments for Items Unpaid by Seller
14 City/Town Taxes to
15 County Taxes to
16 Assessments to
17
18
19

CALCULATION

Total Due to Seller at Closing (M)
Total Due from Seller at Closing (N)
Cash ☐ From ☐ To Seller

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
_____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
_____
_____
_____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

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☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

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Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
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☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Escrow Account
For now, your loan
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Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS/ License ID					
Contact					
Contact NMLS/ License ID					
Email					
Phone					

Confirm Receipt

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.

Applicant Signature Date

Co-Applicant Signature Date

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Contract Details

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance

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.

Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS/ License ID					
Contact					
Contact NMLS/ License ID					
Email					
Phone					

Confirm Receipt

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.

Applicant Signature Date Co-Applicant Signature Date

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID #

H–25(B) Mortgage Loan Transaction Closing Disclosure—Fixed-Rate Loan Sample

Description: This is an example of a completed Closing Disclosure for the fixed-rate loan illustrated by form H–24(B). The purpose, sale price, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information		Loan Information	
Date Issued	9/10/2012	**Borrower**	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345	**Loan Term**	30 years
Closing Date	9/14/2012			**Purpose**	Purchase
Disbursement Date	9/14/2012			**Product**	Fixed Rate
Agent	Epsilon Title Co.	**Seller**	Steve C. and Amy D. 321 Somewhere Drive Anytown, ST 12345	**Loan Type**	☒ Conventional ☐ FHA ☐ VA ☐ _____
File #	12-3456			**Loan ID #**	123456789
Property	456 Somewhere Ave Anytown, ST 12345	**Lender**	Ficus Bank	**MIC #**	000654321
Sale Price	$180,000				

Loan Terms		**Can this amount increase after closing?**
Loan Amount	$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$761.78	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	**Years 1-7**	**Years 8-30**
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,050.26	$967.91

		This estimate includes	**In escrow?**
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	$356.13 a month	☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☒ Other: Homeowner's Association	NO
		See page 4 for escrowed property costs. You must pay for other property costs separately.	

Cash to Close

Cash to Close	$14,272.35	Includes $9,729.54 in Closing Costs ($4,694.05 in Loan Costs + $5,035.49 in Other Costs – $0 in Lender Credits). See details on page 2.

Closing Cost Details

Loan Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges		**$1,802.00**				
01 0.25 % of Loan Amount (Points)		$405.00				
02 Application Fee		$300.00				
03 Underwriting Fee		$1,097.00				
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For		**$236.55**				
01 Appraisal Fee	to John Smith Appraisers Inc.					$405.00
02 Credit Report Fee	to Information Inc.		$29.80			
03 Flood Determination Fee	to Info Co.	$20.00				
04 Flood Monitoring Fee	to Info Co.	$31.75				
05 Tax Monitoring Fee	to Info Co.	$75.00				
06 Tax Status Research Fee	to Info Co.	$80.00				
07						
08						
09						
10						
C. Services Borrower Did Shop For		**$2,655.50**				
01 Pest Inspection Fee	to Pests Co.	$120.50				
02 Survey Fee	to Surveys Co.	$85.00				
03 Title – Insurance Binder	to Epsilon Title Co.	$650.00				
04 Title – Lender's Title Insurance	to Epsilon Title Co.	$500.00				
05 Title – Title Search	to Epsilon Title Co.	$800.00				
06 Title – Settlement Agent Fee	to Epsilon Title Co.	$500.00				
07						
08						
D. TOTAL LOAN COSTS (Borrower-Paid)		**$4,694.05**				
Loan Costs Subtotals (A + B + C)		$4,664.25	$29.80			

Other Costs						
E. Taxes and Other Government Fees		**$85.00**				
01 Recording Fees	Deed: $40.00 Mortgage: $45.00	$85.00				
02 State Transfer Tax				$950.00		
F. Prepaids		**$2,138.24**				
01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.		$1,209.96				
02 Mortgage Insurance Premium (mo.)						
03 Prepaid Interest $17.44 per day from 9/14/12 to 10/1/12		$296.48				
04 Property Taxes (6 mo.) to Any County USA		$631.80				
05						
G. Initial Escrow Payment at Closing		**$412.25**				
01 Homeowner's Insurance $100.83	per month for 2 mo.	$201.66				
02 Mortgage Insurance	per month for mo.					
03 Property Taxes $105.30	per month for 2 mo.	$210.60				
04						
05						
06						
07						
08 Aggregate Adjustment		−0.01				
H. Other Costs		**$2,400.00**				
01 Real Estate Commission to Alpha Real Estate Broker				$700.00		
02 Real Estate Commission to Omega Real Estate Broker				$700.00		
03 Title – Owner's Title Insurance	to Epsilon Title Co.	$1,000.00				
04 HOA Capital Contribution	to HOA Acre Inc.	$500.00				
05 HOA Dues Oct. 2012	to HOA Acre Inc.	$150.00				
06 Home Inspection Fee	to Engineers Inc.	$750.00			$750.00	
07 Home Warranty Fee	to XYZ Warranty Inc.			$450.00		
08						
I. TOTAL OTHER COSTS (Borrower-Paid)		**$5,035.49**				
Other Costs Subtotal (E + F + G + H)		$5,035.49				

J. TOTAL CLOSING COSTS (Borrower-Paid)		**$9,729.54**				
Closing Costs Subtotals (D + I)		$9,699.74	$29.80	$2,800.00	$750.00	$405.00
Lender Credits						

Calculating Cash to Close — Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this change?
Total Closing Costs (J)	$8,054.00	$9,729.54	YES - See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	−$29.80	YES - You paid these Closing Costs **before closing**
Closing Costs Financed (Included in Loan Amount)	$0	$0	NO
Down Payment/Funds from Borrower	$18,000.00	$18,000.00	NO
Deposit	−$10,000.00	−$10,000.00	NO
Funds for Borrower			NO
Seller Credits	$0	−$2,500.00	YES - See Seller Credits in **Section L**
Adjustments and Other Credits	$0	−$927.39	YES - See details in **Sections K and L**
Cash to Close	$16,054.00	$14,272.35	

Summaries of Transactions — Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing		**$189,784.74**
01 Sale Price of Property		$180,000.00
02 Sale Price of Any Personal Property Included in Sale		
03 Closing Costs Paid at Closing (J)		$9,699.74
04		
Adjustments		
05		
06		
07		
Adjustments for Items Paid by Seller in Advance		
08 City/Town Taxes	to	
09 County Taxes	to	
10 Assessments	to	
11 HOA Dues 9/14/12	to 9/30/12	$85.00
12		
13		
14		
15		
L. Paid Already by or on Behalf of Borrower at Closing		**$175,512.39**
01 Deposit		$10,000.00
02 Borrower's Loan Amount		$162,000.00
03 Existing Loan(s) Assumed or Taken Subject to		
04		
05 Seller Credit		$2,500.00
Other Credits		
06 Rebate from Epsilon Title Co.		$750.00
07		
Adjustments		
08		
09		
10		
11		
Adjustments for Items Unpaid by Seller		
12 City/Town Taxes 7/1/12	to 9/14/12	$262.39
13 County Taxes	to	
14 Assessments	to	
15		
16		
17		
CALCULATION		
Total Due from Borrower at Closing (K)		$189,784.74
Total Paid Already by or on Behalf of Borrower at Closing (L)		$175,512.39
Cash to Close ☒ From ☐ To Borrower		**$14,272.35**

SELLER'S TRANSACTION

M. Due to Seller at Closing		**$180,085.00**
01 Sale Price of Property		$180,000.00
02 Sale Price of Any Personal Property Included in Sale		
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09 City/Town Taxes	to	
10 County Taxes	to	
11 Assessments	to	
12 HOA Dues 9/14/12	to 9/30/12	$85.00
13		
14		
15		
16		
N. Due from Seller at Closing		**$115,562.39**
01 Excess Deposit		$10,000.00
02 Closing Costs Paid at Closing (J)		$2,800.00
03 Existing Loan(s) Assumed or Taken Subject to		
04 Payoff of First Mortgage Loan		$100,000.00
05 Payoff of Second Mortgage Loan		
06		
07		
08 Seller Credit		$2,500.00
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14 City/Town Taxes 7/1/12	to 9/14/12	$262.39
15 County Taxes	to	
16 Assessments	to	
17		
18		
19		
CALCULATION		
Total Due to Seller at Closing (M)		$180,085.00
Total Due from Seller at Closing (N)		$115,562.39
Cash ☐ From ☒ To Seller		**$64,522.61**

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☒ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in 456 Somewhere Ave., Anytown, ST 12345
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	$2,473.56	Estimated total amount over year 1 for your escrowed property costs: *Homeowner's Insurance* *Property Taxes*
Non-Escrowed Property Costs over Year 1	$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: *Homeowner's Association Dues* You may have other property costs.
Initial Payment	$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment	$206.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$292,420.88
Finance Charge. The dollar amount the loan will cost you.	$123,997.58
Amount Financed. The loan amount available after paying your upfront finance charge.	$156,964.47
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.441%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.468%
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	1.63%

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Address	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
NMLS/ License ID			Z765416	Z61456	Z61616
Contact	Joe S.		Samuel G.	Joseph C.	Sarah A.
Contact NMLS/ License ID	12345		P16415	P51461	PT1234
Email	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
Phone	123-456-7890		123-555-1717	321-555-7171	987-555-4321

Confirm Receipt

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.

Applicant Signature Date Co-Applicant Signature Date

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID # 123456789

H–25(C) Mortgage Loan Transaction Closing Disclosure—Sample of Borrower Funds From Second-Lien Loan in Summaries of Transactions

Description: This is an example of the information required on the Closing Disclosure by § 1026.38(j) for disclosure of consumer funds from a simultaneous second-lien credit transaction not otherwise disclosed pursuant to § 1026.38(j)(2)(iii) or (iv) that is used to finance part of the purchase price of the property subject to the transaction.

Summaries of Transactions Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION			SELLER'S TRANSACTION		
K. Due from Borrower at Closing			**M. Due to Seller at Closing**		
01 Sale Price of Property			01 Sale Price of Property		
02 Sale Price of Any Personal Property Included in Sale			02 Sale Price of Any Personal Property Included in Sale		
03 Closing Costs Paid at Closing (J)			03		
04			04		
Adjustments			05		
05			06		
06			07		
07			08		
Adjustments for Items Paid by Seller in Advance			**Adjustments for Items Paid by Seller in Advance**		
08 City/Town Taxes	to		09 City/Town Taxes	to	
09 County Taxes	to		10 County Taxes	to	
10 Assessments	to		11 Assessments	to	
11 HOA Dues	to		12 HOA Dues	to	
12			13		
13			14		
14			15		
15			16		
L. Paid Already by or on Behalf of Borrower at Closing			**N. Due from Seller at Closing**		
01 Deposit			01 Excess Deposit		
02 Borrower's Loan Amount			02 Closing Costs Paid at Closing (J)		
03 Existing Loan(s) Assumed or Taken Subject to			03 Existing Loan(s) Assumed or Taken Subject to		
04 Second Loan (Principal Balance $100,000)		$96,500.00	04 Payoff of First Mortgage Loan		
05 Seller Credit			05 Payoff of Second Mortgage Loan		
Other Credits			06		
06			07		
07			08 Seller Credit		
Adjustments			09		
08			10		
09			11		
10			12		
11			13		
Adjustments for Items Unpaid by Seller			**Adjustments for Items Unpaid by Seller**		
12 City/Town Taxes	to		14 City/Town Taxes	to	
13 County Taxes	to		15 County Taxes	to	
14 Assessments	to		16 Assessments	to	
15			17		
16			18		
17			19		
CALCULATION			**CALCULATION**		
Total Due from Borrower at Closing (K)			Total Due to Seller at Closing (M)		
Total Paid Already by or on Behalf of Borrower at Closing (L)			Total Due from Seller at Closing (N)		
Cash to Close ☐ From ☐ To Borrower			**Cash ☐ From ☐ To Seller**		

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID #

H–25(D) Mortgage Loan Transaction Closing Disclosure—Sample of Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions

Description: This is an example of the information required on the Closing Disclosure by § 1026.38(j) and (k) for the satisfaction of a junior-lien transaction by the consumer, which was not paid from closing funds.

Summaries of Transactions Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
K. Due from Borrower at Closing		**M. Due to Seller at Closing**	
01 Sale Price of Property		01 Sale Price of Property	
02 Sale Price of Any Personal Property Included in Sale		02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)		03	
04		04	
Adjustments		05	
05		06	
06		07	
07		08	
Adjustments for Items Paid by Seller in Advance		**Adjustments for Items Paid by Seller in Advance**	
08 City/Town Taxes	to	09 City/Town Taxes	to
09 County Taxes	to	10 County Taxes	to
10 Assessments	to	11 Assessments	to
11 HOA Dues	to	12 HOA Dues	to
12		13	
13		14	
14		15	
15		16	
L. Paid Already by or on Behalf of Borrower at Closing		**N. Due from Seller at Closing**	
01 Deposit		01 Excess Deposit	
02 Borrower's Loan Amount		02 Closing Costs Paid at Closing (J)	
03 Existing Loan(s) Assumed or Taken Subject to		03 Existing Loan(s) Assumed or Taken Subject to	
04 Satisfaction of Junior Lien $5,000 P.O.C. Borrower		04 Payoff of First Mortgage Loan	
05 Seller Credit		05 Payoff of Second Mortgage Loan	
Other Credits		06 Satisfaction of Junior Lien $5,000 P.O.C. Borrower	
06		07	
07		08 Seller Credit	
Adjustments		09	
08		10	
09		11	
10		12	
11		13	
Adjustments for Items Unpaid by Seller		**Adjustments for Items Unpaid by Seller**	
12 City/Town Taxes	to	14 City/Town Taxes	to
13 County Taxes	to	15 County Taxes	to
14 Assessments	to	16 Assessments	to
15		17	
16		18	
17		19	
CALCULATION		**CALCULATION**	
Total Due from Borrower at Closing (K)		Total Due to Seller at Closing (M)	
Total Paid Already by or on Behalf of Borrower at Closing (L)		Total Due from Seller at Closing (N)	
Cash to Close ☐ **From** ☐ **To Borrower**		**Cash** ☐ **From** ☐ **To Seller**	

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID #

H–25(E) Mortgage Loan Transaction Closing Disclosure—Sample of Refinance Transaction

Description: This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The purpose, loan amount, loan term, interest rate, and prepayment penalty have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information		Loan Information	
Date Issued	9/04/2012	**Borrower**	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345	**Loan Term**	15 years
Closing Date	9/10/2012			**Purpose**	Refinance
Disbursement Date	9/14/2012			**Product**	Fixed Rate
Agent	Zeta Title	**Lender**	Ficus Bank		
File #	12-3456			**Loan Type**	☒ Conventional ☐ FHA ☐ VA ☐ _____
Property	123 Anywhere Street Anytown, ST 12345			**Loan ID #**	123456789
Appraised Prop. Value	$135,000			**MIC #**	000009876543

Loan Terms		Can this amount increase after closing?
Loan Amount	$121,000	NO
Interest Rate	3.375%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$857.60	NO
		Does the loan have these features?
Prepayment Penalty		YES • **As high as $2,420** if you pay off the loan during the first 2 years
Balloon Payment		NO

Projected Payments

Payment Calculation	Years 1-3	Years 4-15
Principal & Interest	$857.60	$857.60
Mortgage Insurance	+ 76.63	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 308.50	+ 308.50
Estimated Total Monthly Payment	$1,242.73	$1,166.10

Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time See Details on Page 4*	$408.50 a month	**This estimate includes**	**In escrow?**
		☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☒ Other: HOA	NO
		See page 4 for escrowed property costs. You must pay for other property costs separately.	

Cash to Close

Cash to Close	$4,925.66	Includes $7,419.48 in Closing Costs ($4,385.00 in Loan Costs + $3,034.48 in Other Costs – $0 in Lender Credits). See details on page 2.

Closing Cost Details

Loan Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges		**$1,810.00**		
01 1 % of Loan Amount (Points)		$1,210.00		
02 Origination Fee		$600.00		
03				
04				
05				
06				
07				
08				
B. Services Borrower Did Not Shop For		**$2,350.00**		
01 Appraisal Fee	to Value, Inc.	$200.00		
02 Appraisal Management Co. Fee	to Vendors, Inc.	$250.00		
03 Credit Report Fee	to Info, Inc.		$40.00	
04 Flood Determination Fee	to Info, Inc.	$45.00		
05 Title – Title Search	to Zeta Title	$400.00		
06 Title – Lender's Title Policy	to Zeta Title	$1,115.00		
07 Title – Settlement Agent Fee	to Zeta Title	$300.00		
08				
09				
10				
C. Services Borrower Did Shop For		**$225.00**		
01 Pest Inspection Fee	to Pest, LLC	$100.00		
02 Survey Fee	to Survey, LLC	$125.00		
03				
04				
05				
06				
07				
08				
D. TOTAL LOAN COSTS (Borrower-Paid)		**$4,385.00**		
Loan Costs Subtotals (A + B + C)		$4,345.00	$40.00	

Other Costs				
E. Taxes and Other Government Fees		**$1,555.00**		
01 Recording Fees	Deed: Mortgage: $130.00	$130.00		
02 Transfer Tax	to Any County	$1,425.00		
F. Prepaids		**$709.23**		
01 Homeowner's Insurance Premium (6 mo.) to Eta Insurance Co.		$519.00		
02 Mortgage Insurance Premium (mo.)				
03 Prepaid Interest $11.19 per day from 9/14/2012 to 10/1/2012		$190.23		
04 Property Taxes (mo.)				
05				
G. Initial Escrow Payment at Closing		**$770.25**		
01 Homeowner's Insurance $86.50 per month for 2 mo.		$173.00		
02 Mortgage Insurance $76.63 per month for 2 mo.		$153.26		
03 Property Taxes $222.00 per month for 2 mo.		$444.00		
04				
05				
06				
07				
08 Aggregate Adjustment		– $0.01		
H. Other				
01				
02				
03				
04				
05				
06				
07				
08				
I. TOTAL OTHER COSTS (Borrower-Paid)		**$3,034.48**		
Other Costs Subtotal (E + F + G + H)		$3,034.48		

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$7,419.48**		
Closing Costs Subtotals (D + I)	$7,379.48	$40.00	
Lender Credits			

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this change?
Total Closing Costs (J)	$7,397.00	$7,419.48	YES • See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	− $40.00	YES • You paid these costs **before closing**
Closing Costs Financed (Included in Loan Amount)	$0	$0	NO
Down Payment/Funds from Borrower	$0	$0	NO
Funds for Borrower	$0	− $2,453.82	YES • After the disbursements below, the funds available to you **have increased**
Cash to Close	$7,397.00	$4,925.66	

Disbursements to Others Use this table to see a list of payments from your loan funds.

TO	AMOUNT
01 Rho Servicing to pay off existing loan	$118,546.18
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
Total Disbursement to Others	$118,546.18

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payment
Your lender will
☒ accept payments that are less than the full amount due (partial payments). Partial payments will be applied:
in this order to: 1. accrued interest, 2. principal balance.

☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in
123 Anywhere Street, Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	$3,702.00	Estimated total amount over year 1 for your escrowed property costs: *Property Taxes, Homeowner's Insurance*
Non-Escrowed Property Costs over Year 1	$1,200.00	Estimated total amount over year 1 for your non-escrowed property costs: *HOA Fees* You may have other property costs.
Initial Payment	$770.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment	$385.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$161,406.58
Finance Charge. The dollar amount the loan will cost you.	$41,961.57
Amount Financed. The loan amount available after paying your upfront finance charge.	$114,705.33
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.443%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	27.74%
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	1.63%

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☒ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent
Name	Ficus Bank	Pecan Mortgage Broker Inc.	Zeta Title
Address	4321 Random Blvd. Somecity, ST 12340	222222	321 Uptown Dr. Anytown, ST 12345
NMLS/ License ID			P76821
Contact	Joe S.	Jane B.	Joan T.
Contact NMLS/ License ID	12345	54321	
Email	joesmith@ficusbank.com	janeb@pecanmortgagebroker.com	joan@zt.biz
Phone	123-456-7890	333-444-5555	555-321-9876

Confirm Receipt

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.

Applicant Signature Date Co-Applicant Signature Date

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID # 123456789

H–25(F) Mortgage Loan Transaction Closing Disclosure—Sample of Refinance Transaction (19(e)(3) violation)

Description: This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The Closing Costs have increased in violation of § 1026.19(e)(3) by $100, for which the creditor has provided a credit.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information

Date Issued	9/04/2012
Closing Date	9/10/2012
Disbursement Date	9/14/2012
Agent	Zeta Title
File #	12-3456
Property	123 Anywhere Street Anytown, ST 12345
Appraised Prop. Value	$135,000

Transaction Information

Borrower	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345
Lender	Ficus Bank

Loan Information

Loan Term	15 years
Purpose	Refinance
Product	Fixed Rate
Loan Type	☒ Conventional ☐ FHA ☐ VA ☐ _____
Loan ID #	123456789
MIC #	000009876543

Loan Terms		**Can this amount increase after closing?**
Loan Amount	$121,000	NO
Interest Rate	3.375%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$857.60	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	**Years 1-3**	**Years 4-15**
Principal & Interest	$857.60	$857.60
Mortgage Insurance	+ 76.63	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 308.50	+ 308.50
Estimated Total Monthly Payment	$1,242.73	$1,166.10

		This estimate includes	**In escrow?**
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	$408.50 a month	☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☒ Other: HOA	NO
		See page 4 for escrowed property costs. You must pay for other property costs separately.	

Cash to Close

Cash to Close	$4,675.66	Includes $7,169.48 in Closing Costs ($4,385.00 in Loan Costs + $3,134.48 in Other Costs – $350.00 in Lender Credits). See details on page 2.

Closing Cost Details

Loan Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges		**$1,810.00**		
01 1 % of Loan Amount (Points)		$1,210.00		
02 Origination Fee		$600.00		
03				
04				
05				
06				
07				
08				
B. Services Borrower Did Not Shop For		**$2,350.00**		
01 Appraisal Fee	to Value, Inc.	$200.00		
02 Appraisal Management Co. Fee	to Vendors, Inc.	$250.00		
03 Credit Report Fee	to Info, Inc.		$40.00	
04 Flood Determination Fee	to Info, Inc.	$45.00		
05 Title – Title Search	to Zeta Title	$400.00		
06 Title – Lender's Title Policy	to Zeta Title	$1,115.00		
07 Title – Settlement Agent Fee	to Zeta Title	$300.00		
08				
09				
10				
C. Services Borrower Did Shop For		**$225.00**		
01 Pest Inspection Fee	to Pest, LLC	$100.00		
02 Survey Fee	to Survey, LLC	$125.00		
03				
04				
05				
06				
07				
08				
D. TOTAL LOAN COSTS (Borrower-Paid)		**$4,385.00**		
Loan Costs Subtotals (A + B + C)		$4,345.00	$40.00	

Other Costs				
E. Taxes and Other Government Fees		**$1,655.00**		
01 Recording Fees	Deed: Mortgage: $130.00	$130.00		
02 Transfer Tax	to Any County	$1,525.00		
F. Prepaids		**$709.23**		
01 Homeowner's Insurance Premium (6 mo.) to Eta Insurance Co.		$519.00		
02 Mortgage Insurance Premium (mo.)				
03 Prepaid Interest $11.19 per day from 9/14/2012 to 10/1/2012		$190.23		
04 Property Taxes (mo.)				
05				
G. Initial Escrow Payment at Closing		**$770.25**		
01 Homeowner's Insurance $86.50 per month for 2 mo.		$173.00		
02 Mortgage Insurance $76.63 per month for 2 mo.		$153.26		
03 Property Taxes $222.00 per month for 2 mo.		$444.00		
04				
05				
06				
07				
08 Aggregate Adjustment		– $0.01		
H. Other				
01				
02				
03				
04				
05				
06				
07				
08				
I. TOTAL OTHER COSTS (Borrower-Paid)		**$3,134.48**		
Other Costs Subtotal (E + F + G + H)		$3,134.48		

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$7,169.48**		
Closing Costs Subtotals (D + I)	$7,479.48	$40.00	
Lender Credits	– $350.00		

Calculating Cash to Close — Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this change?
Total Closing Costs (J)	$7,397.00	$7,169.48	YES • See **Total Loan Costs (D)** and **Total Other Costs (I)** • Increase **exceeds legal limits** by $100
Closing Costs Paid Before Closing	$0	−$40.00	YES • You paid these Closing Costs **before closing**
Closing Costs Financed (Included in Loan Amount)	$0	$0	NO
Down Payment/Funds from Borrower	$0	$0	NO
Funds for Borrower	$0	−$2,453.82	YES • After the disbursements below, the funds available to you **have increased**
Cash to Close	$7,397.00	$4,675.66	

Disbursements to Others — Use this table to see a list of payments from your loan funds.

TO	AMOUNT
01 Rho Servicing to pay off existing loan	$118,546.18
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
Total Disbursement to Others	$118,546.18

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☒ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
123 Anywhere Street, Anytown, ST 12345
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	$3,702.00	Estimated total amount over year 1 for your escrowed property costs: *Property Taxes, Homeowner's Insurance*
Non-Escrowed Property Costs over Year 1	$1,200.00	Estimated total amount over year 1 for your non-escrowed property costs: *HOA Fees* You may have other property costs.
Initial Payment	$770.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment	$385.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$161,406.58
Finance Charge. The dollar amount the loan will cost you.	$41,700.38
Amount Financed. The loan amount available after paying your upfront finance charge.	$114,966.52
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.409%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	27.74%
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	1.63%

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☒ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent
Name	Ficus Bank	Pecan Mortgage Broker Inc.	Zeta Title
Address	4321 Random Blvd. Somecity, ST 12340	222222	321 Uptown Dr. Anytown, ST 12345
NMLS/ License ID			P76821
Contact	Joe S.	Jane B.	Joan T.
Contact NMLS/ License ID	12345	54321	
Email	joesmith@ficusbank.com	janeb@pecanmortgagebroker.com	joan@zt.biz
Phone	123-456-7890	333-444-5555	555-321-9876

Confirm Receipt

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.

Applicant Signature Date Co-Applicant Signature Date

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID # 123456789

H–25(G) Mortgage Loan Transaction Closing Disclosure—Sample of Refinance Transaction With Financed Closing Costs

Description: This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The consumer has financed $4,500 of the Closing Costs in the Loan Amount.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information		Loan Information	
Date Issued	9/04/2012	**Borrower**	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345	**Loan Term**	15 years
Closing Date	9/10/2012			**Purpose**	Refinance
Disbursement Date	9/14/2012			**Product**	Fixed Rate
Agent	Zeta Title	**Lender**	Ficus Bank		
File #	12-3456			**Loan Type**	☒ Conventional ☐ FHA ☐ VA ☐ _____
Property	123 Anywhere Street Anytown, ST 12345			**Loan ID #**	123456789
Appraised Prop. Value	$135,000			**MIC #**	000009876543

Loan Terms		**Can this amount increase after closing?**
Loan Amount	$125,500	NO
Interest Rate	3.375%	NO
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$889.49	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	**Years 1-3**	**Years 4-15**
Principal & Interest	$889.49	$889.49
Mortgage Insurance	+ 79.48	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 308.50	+ 308.50
Estimated Total Monthly Payment	$1,277.47	$1,197.99

Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	$408.50 a month	**This estimate includes**	**In escrow?**
		☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☒ Other: HOA	NO
		See page 4 for escrowed property costs. You must pay for other property costs separately.	

Cash to Close

Cash to Close	$577.33	Includes $7,571.15 in Closing Costs ($4,471.00 in Loan Costs + $3,100.15 in Other Costs – $0 in Lender Credits). See details on page 2.

Closing Cost Details

Loan Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges		**$1,855.00**		
01 1 % of Loan Amount (Points)		$1,255.00		
02 Origination Fee		$600.00		
03				
04				
05				
06				
07				
08				
B. Services Borrower Did Not Shop For		**$2,391.00**		
01 Appraisal Fee	to Value, Inc.	$200.00		
02 Appraisal Management Co. Fee	to Vendors, Inc.	$250.00		
03 Credit Report Fee	to Info, Inc.		$40.00	
04 Flood Determination Fee	to Info, Inc.	$45.00		
05 Title – Title Search	to Zeta Title	$400.00		
06 Title – Lender's Title Policy	to Zeta Title	$1,156.00		
07 Title – Settlement Agent Fee	to Zeta Title	$300.00		
08				
09				
10				
C. Services Borrower Did Shop For		**$225.00**		
01 Pest Inspection Fee	to Pest, LLC	$100.00		
02 Survey Fee	to Survey, LLC	$125.00		
03				
04				
05				
06				
07				
08				
D. TOTAL LOAN COSTS (Borrower-Paid)		**$4,471.00**		
Loan Costs Subtotals (A + B + C)		$4,431.00	$40.00	

Other Costs				
E. Taxes and Other Government Fees		**$1,608.00**		
01 Recording Fees	Deed: Mortgage: $130.00	$130.00		
02 Transfer Tax	to Any County	$1,478.00		
F. Prepaids		**$716.20**		
01 Homeowner's Insurance Premium (6 mo.) to Eta Insurance Co.		$519.00		
02 Mortgage Insurance Premium (mo.)				
03 Prepaid Interest $11.60 per day from 9/14/2012 to 10/1/2012		$197.20		
04 Property Taxes (mo.)				
05				
G. Initial Escrow Payment at Closing		**$775.95**		
01 Homeowner's Insurance $86.50	per month for 2 mo.	$173.00		
02 Mortgage Insurance $79.48	per month for 2 mo.	$158.96		
03 Property Taxes $222.00	per month for 2 mo.	$444.00		
04				
05				
06				
07				
08 Aggregate Adjustment		– $0.01		
H. Other				
01				
02				
03				
04				
05				
06				
07				
08				
I. TOTAL OTHER COSTS (Borrower-Paid)		**$3,100.15**		
Other Costs Subtotal (E + F + G + H)		$3,100.15		

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$7,571.15**		
Closing Costs Subtotals (D + I)	$7,531.15	$40.00	
Lender Credits			

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this change?
Total Closing Costs (J)	$7,397.00	$7,571.15	YES • See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	– $40.00	YES • You paid these Closing Costs **before closing**
Closing Costs Financed (Included in Loan Amount)	$0	– $4,500.00	YES • You included these Closing Costs in your Loan Amount, which **increased your Loan Amount**
Down Payment/Funds from Borrower	$0	$0	NO
Funds for Borrower	$0	– $2,453.82	YES • After the disbursements below, the funds available to you **have increased**
Cash to Close	$7,397.00	$577.33	

Disbursements to Others Use this table to see a list of payments from your loan funds.

TO	AMOUNT
01 Rho Servicing to pay off existing loan	$118,546.18
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
Total Disbursement to Others	$118,546.18

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☒ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
123 Anywhere Street, Anytown, ST 12345
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	$3,702.00	Estimated total amount over year 1 for your escrowed property costs: *Homeowner's Insurance, Property Taxes*
Non-Escrowed Property Costs over Year 1	$1,200.00	Estimated total amount over year 1 for your non-escrowed property costs: *HOA Fees* You may have other property costs.
Initial Payment	$775.95	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment	$387.98	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$167,808.24
Finance Charge. The dollar amount the loan will cost you.	$43,868.63
Amount Financed. The loan amount available after paying your upfront finance charge.	$119,064.85
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.481%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	27.73%
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	1.63%

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☒ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent
Name	Ficus Bank	Pecan Mortgage Broker Inc.	Zeta Title
Address	4321 Random Blvd. Somecity, ST 12340	222222	321 Uptown Dr. Anytown, ST 12345
NMLS/ License ID			P76821
Contact	Joe S.	Jane B.	Joan T.
Contact NMLS/ License ID	12345	54321	
Email	joesmith@ficusbank.com	janeb@pecanmortgagebroker.com	joan@zt.biz
Phone	123-456-7890	333-444-5555	555-321-9876

Confirm Receipt

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.

Applicant Signature Date Co-Applicant Signature Date

H–25(H) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Cost Details

Description: This is an example of the modification to Closing Cost Details permitted by § 1026.38(t)(5)(v).

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges					
01 % of Loan Amount (Points)					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
C. Services Borrower Did Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					

Closing Cost Details

Other Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
E. Taxes and Other Government Fees					
01 Recording Fees Deed: Mortgage:					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
F. Prepaids					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest per day from to					
04 Property Taxes (mo.)					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
G. Initial Escrow Payment at Closing					
01 Homeowner's Insurance per month for mo.					
02 Mortgage Insurance per month for mo.					
03 Property Taxes per month for mo.					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14 Aggregate Adjustment					
H. Other					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
15					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					

J. TOTAL CLOSING COSTS (Borrower-Paid)					
Closing Costs Subtotals (D + I)					
Lender Credits					

CLOSING DISCLOSURE PAGE 2b OF 5 • LOAN ID #

H–25(I) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Disclosure Provided to Seller

Description: This is an example of the modification permitted by § 1026.38(t)(5)(vii).

Closing Disclosure

Closing Information

Date Issued
Closing Date
Disbursement Date
Agent
File #
Property

Sale Price

Transaction Information

Borrower

Seller

Summaries of Transactions

SELLER'S TRANSACTION

Due to Seller at Closing		
01	Sale Price of Property	
02	Sale Price of Any Personal Property Included in Sale	
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09	City/Town Taxes	to
10	County Taxes	to
11	Assessments	to
12	HOA Dues	to
13		
14		
15		
16		
Due from Seller at Closing		
01	Excess Deposit	
02	Closing Costs Paid at Closing (J)	
03	Existing Loan(s) Assumed or Taken Subject to	
04	Payoff of First Mortgage Loan	
05	Payoff of Second Mortgage Loan	
06		
07		
08	Seller Credit	
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14	City/Town Taxes	to
15	County Taxes	to
16	Assessments	to
17		
18		
19		

CALCULATION

Total Due to Seller at Closing	
Total Due from Seller at Closing	
Cash ☐ From ☐ To Seller	

Contact Information

REAL ESTATE BROKER (B)	
Name	
Address	
Contact	
Email	
Phone	
REAL ESTATE BROKER (S)	
Name	
Address	
Contact	
Email	
Phone	
SETTLEMENT AGENT	
Name	
Address	
License ID	
Contact	
Contact License ID	
Email	
Phone	

Questions? To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Closing Cost Details

Loan Costs	Seller-Paid At Closing	Seller-Paid Before Closing
A. Origination Charges		
01 % of Loan Amount (Points)		
02		
03		
04		
05		
06		
07		
08		
B. Services Borrower Did Not Shop For		
01		
02		
03		
04		
05		
06		
07		
08		
C. Services Borrower Did Shop For		
01		
02		
03		
04		
05		
06		
07		
08		
D. LOAN COSTS SUBTOTALS (A + B + C)		

Other Costs		
E. Taxes and Other Government Fees		
01 Recording Fees Deed: Mortgage:		
02		
F. Prepaids		
01 Homeowner's Insurance Premium (mo.) to		
02 Mortgage Insurance Premium (mo.)		
03 Prepaid Interest per day from to		
04 Property Taxes (mo.)		
05		
G. Initial Escrow Payment at Closing		
01 HOA/Condo/Co-op per month for mo.		
02 Homeowner's Insurance per month for mo.		
03 Mortgage Insurance per month for mo.		
04 Property Taxes per month for mo.		
05		
06		
07		
08 Aggregate Adjustment		
H. Other		
01		
02		
03		
04		
05		
06		
07		
08		
09		
10		
11		
12		
13		
I. OTHER COSTS SUBTOTALS (E + F + G + H)		
J. TOTAL CLOSING COSTS (D + I)		

CLOSING DISCLOSURE PAGE 2 OF 2

H–25(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller

Description: This is an example of the modification permitted by § 1026.38(t)(5)(viii).

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose**
Disbursement Date		**Product**
Agent	**Lender**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____
Property		**Loan ID #**
Appraised Prop. Value		**MIC #**

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments	
Payment Calculation	
Principal & Interest Mortgage Insurance Estimated Escrow *Amount Can Increase Over Time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	**This estimate includes** **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: Windstorm Insurance, HOA *See page 4 for escrowed property costs. You must pay for other property costs separately.*

Cash to Close	
Cash to Close	Includes in Closing Costs (in Loan Costs + in Other Costs – in Lender Credits). See details on page 2..

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges			
01 % of Loan Amount (Points)			
02			
03			
04			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
D. TOTAL LOAN COSTS (Borrower-Paid)			
Loan Costs Subtotals (A + B + C)			

Other Costs			
E. Taxes and Other Government Fees			
01 Recording Fees Deed: Mortgage:			
02			
F. Prepaids			
01 Homeowner's Insurance Premium (mo.)			
02 Mortgage Insurance Premium (mo.)			
03 Prepaid Interest per day from to			
04 Property Taxes (mo.)			
05			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance per month for mo.			
02 Mortgage Insurance per month for mo.			
03 Property Taxes per month for mo.			
04			
05			
06			
07			
08 Aggregate Adjustment			
H. Other			
01			
02			
03			
04			
05			
06			
07			
08			
I. TOTAL OTHER COSTS (Borrower-Paid)			
Other Costs Subtotals (E + F + G + H)			

J. TOTAL CLOSING COSTS (Borrower-Paid)			
Closing Costs Subtotals (D + I)			
Lender Credits			

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Included in Loan Amount)			
Down Payment/Funds from Borrower			
Funds for Borrower			
Cash to Close			

Disbursements to Others Use this table to see a list of payments from your loan funds.

TO	AMOUNT
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
Total Disbursement to Others	

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
_____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
_____
_____
_____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

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Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
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Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

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Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

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Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
Your lender will
☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied: _____
☐ not accept partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in _____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
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Initial Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Payment		The amount included in your total monthly payment.

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No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent
Name			
Address			
NMLS/ License ID			
Contact			
Contact NMLS/ License ID			
Email			
Phone			

Confirm Receipt

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.

Applicant Signature Date

Co-Applicant Signature Date

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
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.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent
Name			
Address			
NMLS/ License ID			
Contact			
Contact NMLS/ License ID			
Email			
Phone			

Confirm Receipt

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.

Applicant Signature Date Co-Applicant Signature Date

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID #

H–26(A) Mortgage Loan Transaction—Disclaimer

Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.

H–26(B) Mortgage Loan Transaction—Disclaimer on Worksheet

Description: This is an example of the placement of the disclaimer required by § 1026.19(e)(2)(ii) on the first page of a consumer-specific worksheet for which a creditor uses a format similar to the Loan Estimate in H–24 of this appendix.

FICUS BANK
4321 Random Boulevard • Somecity, ST 54321

Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.

Worksheet

DATE ISSUED
APPLICANTS

PROPERTY
SALE PRICE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	

Projected Payments	
Payment Calculation	
Principal & Interest Mortgage Insurance Estimated Escrow *Amount Can Increase Over Time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time*	**This estimate includes** **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*

Cash to Close	
Estimated Cash to Close	Includes in Closing Costs (in Loan Costs + in Other Costs – in Lender Credits). See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

PAGE 1 OF 3 • LOAN ID #

H–27(A) Mortgage Loan Transaction—Written List of Providers

Description: This is a model for the written list of settlement service providers required by § 1026.19(e)(1)(vi) and the statement required by § 1026.19(e)(1)(vi)(C) that the consumer may select a settlement service provider that is not on the list.

Additional Details for Services You Can Shop For

To get you started with shopping, this list identifies some providers for the services you can shop for (see Section C on page 2).

Service Provider List You can select these providers or shop for your own providers.

Service	Estimate	Provider We Indentified	Contact Information

APPLICANTS: DATE ISSUED: LOAN ID #

H–27(B) Mortgage Loan Transaction—Sample of Written List of Providers

Description: This is a sample of the Written List of Providers for the transaction in the sample Loan Estimate illustrated by form H–24(B) of this appendix.

Additional Details for Services You Can Shop For

To get you started with shopping, this list identifies some providers for the services you can shop for (see Section C on page 2).

Service Provider List — You can select these providers or shop for your own providers.

Service	Estimate	Provider We Indentified	Contact Information
Pest Inspection Fee	$135	Pest Co.	Jane P. 123 Avenue A Anytown, ST 12345 janep@pestco.com 111-222-3333
Survey Fee	$65	Surveyor LLC	Bill B. 456 Avenue B Anytown, ST 12341 billb@surveyorllc.com 111-333-4444
Survey Fee		Surveys Inc.	Charlie P. 654 Avenue C Anytown, ST 12340 charliep@surveysinc.com 111-333-2222
Title – Insurance Binder	$650	Gamma Title Co.	Joanna C. 789 Avenue D Anytown, ST 12333 joannac@gammatitle.com 222-444-5555
Title – Lender's Title Insurance	$500		
Title – Title Search	$800		
Title – Settlement Agent Fee	$500		
Title – Lender's Title Insurance	$1,100	Delta Title Inc.	Frank F. 321 Avenue E Anytown, ST 12321 frankf@deltatitle.com 222-444-6666
Title – Other Title Services	$1,000		
Title – Settlement Agent Fee	$350		

APPLICANTS: John A. and Mary B. DATE ISSUED: 7/23/2012 LOAN ID # 123456789

H–27(C) Mortgage Loan Transaction—Sample of Written List of Providers With Services You Cannot Shop For

Description: This is a sample of the Written List of Providers with information about the providers selected by the creditor for the charges disclosed pursuant to § 1026.37(f)(2).

Additional Details for Services You Can Shop For

To get you started with shopping, this list identifies some providers for the services you can shop for (see Section C on page 2).

Service Provider List — You can select these providers or shop for your own providers.

Service	Estimate	Provider We Indentified	Contact Information

Additional Details for Services You Cannot Shop For

Service Provider List — You can only select from these providers for these services.

Service	Estimate	Provider We Indentified	Contact Information

APPLICANTS: DATE ISSUED: LOAN ID #

◀

BILLING CODE 4810–25–C

22. In Supplement I to Part 1026:

A. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability,* subheading *1(c) Coverage,* the subheading *Paragraph 1(c)(5)* and paragraph 1. under that subheading are added.

B. Under *Section 1026.2—Definitions and Rules of Construction:*

i. The subheading *2(a)(3) Application* and paragraphs 1., 2., and 3. under that subheading are added.

ii. Under subheading *2(a)(6) Business day,* paragraph 2. is revised.

iii. Under subheading *2(a)(25) Security interest,* paragraph 2. is revised.

C. Under *Section 1026.3—Exempt Transactions:*

i. Under subheading *3(a) Business, commercial, agricultural, or organizational credit,* paragraphs 9. and 10. are revised.

ii. The subheading *3(h) Partial exemption for certain mortgage loans* and paragraphs 1. and 2. under that subheading are added.

D. Under *Section 1026.4—Finance Charge:*

i. Under subheading *4(a) Definition,* paragraph 6. is added.

ii. Under subheading *4(a)(2) Special rule; closing agent charges,* paragraph 3. is added.

iii. Under subheading *4(b) Examples of finance charges,* paragraph 1. is revised.

iv. Under subheading *4(c) Charges excluded from the finance charge:*

a. Under subheading *Paragraph 4(c)(1),* paragraph 1. is revised.

b. Under subheading *4(c)(7) Real-estate related fees,* paragraphs 1. and .3 are revised.

v. Under subheading *4(d) Insurance and debt cancellation and debt suspension coverage,* paragraphs 8. and 12. are revised.

vi. Under subheading *4(e) Certain security interest charges,* paragraph 1. is revised.

vii. The subheading *4(g) Special rule for closed-end mortgage transactions* and paragraphs 1., 2., and 3. under that subheading are added.

E. Under *Section 1026.17—General Disclosure Requirements:*

i. Paragraph 1. is added.

ii. Under subheading *17(a) Form of disclosures,* subheading *Paragraph 17(a)(1),* paragraph 7. is revised.

iii. Under subheading *17(c) Basis of disclosures and use of estimates:*

a. Under subheading *Paragraph 17(c)(1),* paragraphs 1., 2., 3., 4., 5., 8., 10., 11., and 12. are revised and paragraph 19. is added.

b. Under subheading *Paragraph 17(c)(2)(i),* paragraphs 1., 2., and 3. are revised.

c. Under subheading *Paragraph 17(c)(2)(ii),* paragraph 1. is revised.

d. Under subheading *Paragraph 17(c)(4),* paragraph 1. is revised.

e. Under subheading *Paragraph 17(c)(5),* paragraphs 2., 3., and 4. are revised.

iv. Under subheading *17(d) Multiple creditors; multiple consumers,* paragraph 2. is revised.

v. Under subheading *17(e) Effect of subsequent events,* paragraph 1. is revised.

vi. Under subheading *17(f) Early disclosures,* paragraphs 1., 2., 3., and 4. are revised.

vii. Under subheading *17(g) Mail or telephone orders—delay in disclosures,* paragraph 1. is revised.

viii. Under subheading *17(h) Series of sales—delay in disclosures,* paragraph 1. is revised.

F. Under *Section 1026.18—Content of Disclosures:*

i. Paragraph 3. is added.

ii. Under subheading *18(b) Amount financed:*

a. Paragraph 2. is removed.

b. Under subheading *Paragraph 18(b)(2),* paragraph 1. is revised.

iii. Under subheading *18(c) Itemization of amount financed:*

a. Paragraph 4. is revised.

b. Under subheading *Paragraph 18(c)(1)(iv),* paragraph 2. is revised.

iv. Under subheading *18(f) Variable rate,* subheading *Paragraph 18(f)(1)(iv),* paragraph 2. is revised.

v. Under subheading *18(g) Payment schedule:*

a. Paragraphs 4. and 6. are revised.

b. Paragraph 5. is removed and reserved.

c. Under subheading *Paragraph 18(g)(2),* paragraphs 1. and 2. are revised.

vi. Under subheading *18(k) Prepayment:*

a. Paragraphs 1., 2., and 3. are revised.

b. Under subheading *Paragraph 18(k)(1),* paragraph 1. is revised and paragraph 2. is added.

c. Under subheading *Paragraph 18(k)(2),* paragraph 1. is revised.

vii. Under subheading *18(r) Required deposit,* paragraph 6.vi is removed and reserved.

viii. Under subheading *18(s) Interest rate and payment summary for mortgage transactions:*

a. Paragraph 1. is revised and paragraph 4. is added.

b. Under subheading *18(s)(3) Payments for amortizing loans,* subheading *Paragraph 18(s)(3)(i)(C),* paragraph 2. is revised.

G. Under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions:*

i. Under subheading *19(a)(1)(i) Time of disclosures,* paragraph 1. is revised.

ii. Under subheading *19(a)(5) Timeshare plans:*

a. The subheading *19(a)(5) Timeshare plans* is removed.

b. The subheading *Paragraph 19(a)(5)(ii)* and paragraphs 1., 2., 3., 4., and 5. under that subheading are removed.

c. The subheading *Paragraph 19(a)(5)(iii)* and paragraphs 1. and 2. under that subheading are removed.

iii. New *19(e) Mortgage loans secured by real property—Early disclosures, 19(f) Mortgage loans secured by real property—Final disclosures,* and *19(g) Special information booklet at time of application* are added.

H. Under *Section 1026.22—Determination of Annual Percentage Rate,* subheading *22(a) Accuracy of annual percentage rate,* subheading *22(a)(4) Mortgage loans,* paragraph 1. is revised.

I. Under *Section 1026.24—Advertising, 24(d) Advertisement of terms that require additional disclosures,* subheading *24(d)(2) Additional terms,* paragraph 2. is revised.

J. Under *Section 1026.25—Record Retention:*

i. The subheading *25(c) Records related to certain requirements for mortgage loans* is added.

ii. The subheading *25(c)(1) Records related to requirements for loans secured by real property* and paragraphs 1. and 2. under that subheading are added.

iii. The subheading *25(c)(1)(iii) Electronic records* and paragraph 1. under that subheading are added.

K. Under *Section 1026.28—Effect on State Laws,* subheading *28(a) Inconsistent disclosure requirements,* paragraph 1. is revised.

L. Under *Section 1026.29—State Exemptions,* subheading *29(a) General rule,* paragraphs 2. and 4. are revised.

M. New *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)* is added.

N. New *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)* is added.

O. Under *Section 1026.39—Mortgage transfer disclosures,* subheading *39(d) Content of required disclosures:*

i. Paragraph 2. is added.

ii. The subheading *Paragraph 39(d)(5)* and paragraph 1. under that subheading are added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

SUBPART A—GENERAL

Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability 1(c) Coverage

* * * * *

►Paragraph 1(c)(5).

1. *Temporary exemption.* Section 1026.1(c)(5) implements 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 the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act, by exempting persons from the disclosure requirements of those sections. These exemptions are intended to be temporary, lasting only until regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act (12 U.S.C. 5532(f)) becomes mandatory. Section 1026.1(c)(5) does not exempt any person from any other requirement of this part, Regulation X (12 CFR part 1024), the Truth in Lending Act, or the Real Estate Settlement Procedures Act.◄

* * * * *

Section 1026.2—Definitions and Rules of Construction

* * * * *

►*2(a)(3) Application.*

1. *In general.* An application means the submission of a consumer's financial information for purposes of obtaining an extension of credit. Except for purposes of subpart B, subpart F, and subpart G, the term consists of the consumer's name, the consumer's income, the consumer's 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. This 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 these six pieces of information, it has an application for purposes of the requirements of Regulation Z. A submission may be in written or electronic format and includes a written record of an oral application. The following examples are illustrative of this provision:

i. Assume a creditor provides a consumer with an application form containing 20 questions about the consumer's credit history and the collateral value. The consumer submits answers to nine of the questions and informs the creditor that the consumer will contact the creditor the next day with answers to the other 11 questions. Although the consumer provided nine pieces of information, the consumer did not provide a social security number. The creditor has not yet received an application for purposes of § 1026.2(a)(3).

ii. Assume a creditor requires all applicants to submit 20 pieces of information. The consumer submits only six pieces of information and informs the creditor that the consumer will contact the creditor the next day with answers to the other 14 questions. The six pieces of information provided by the consumer were the consumer's name, income, social security number, property address, estimate of the value of the property, and the mortgage loan amount sought. Even though the creditor requires 14 additional pieces of information to process the consumer's request for a mortgage loan, the creditor has received an application for the purposes of § 1026.2(a)(3) and therefore must comply with the relevant requirements under § 1026.19.

2. *Social security number to obtain a credit report.* If a consumer does not have a social security number, the creditor may substitute whatever unique identifier the creditor uses to obtain a credit report on the consumer. For example, 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.

3. *Receipt of credit report fees.* Section 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). Section 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). Whether, or when, such fees are received does not affect whether an application has been received 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). For example, if, in a transaction subject to § 1026.19(e)(1)(i), a creditor receives the six pieces of information identified under § 1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with § 1026.19(e)(1)(iii) if it provides the disclosures required under § 1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period begins on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.◄

* * * * *

2(a)(6) Business day.

* * * * *

2. *Rule for rescission, disclosures for certain mortgage transactions, and private education loans.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 1026.19(a)(1)(ii), 1026.19(a)(2), ►1026.19(e)(1)(iii), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii),◄ 1026.31(c), or the receipt of disclosures for private education loans under § 1026.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

2(a)(25) Security interest.

* * * * *

2. *Exclusions.* The general definition of security interest excludes three groups of interests: Incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under ►§ ◄§ 1026.18, ►1026.19(e) and (f), and 1026.38(l)(6)◄, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(a) Business, commercial, agricultural, or organizational credit.

* * * * *

9. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit. ►*But see* comment 3(a)–10 concerning credit extended to trusts.◄

10. ►*Trusts.* Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization. Specifically:

i. *Trusts for tax or estate planning purposes.* In some instances, a creditor may extend credit for consumer purposes to a trust that a consumer has created for tax or estate planning purposes (or both). 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. During their lifetimes, however, such consumers continue to use the assets of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by the consumer either in both the consumer's individual capacity and as trustee or in only one capacity or the other. Regardless of the capacity or capacities in which the consumer executes the loan documents, assuming the transaction is for personal, family, or household purposes, the transaction is subject to the regulation because in

substance (if not form) consumer credit is being extended.

ii. ◄*Land trusts.* [Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization.] In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household purposes, these transactions are subject to the regulation because in substance (if not form) consumer credit is being extended.

* * * * *

►*3(h) Partial exemption for certain mortgage loans.*

1. *Partial exemption.* Section 1026.3(h) exempts certain transactions from only the disclosures required by § 1026.19(e), (f), and (g), and not from any of the other applicable requirements of this part. As provided by § 1026.3(h)(6), creditors must comply with all other applicable requirements of this part. In addition, the creditor must provide the disclosures required by § 1026.18, even if the creditor would not otherwise be subject to the disclosure requirements of § 1026.18. The consumer also has the right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

2. *Requirements of exemption.* The 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) is determined by the terms of the credit contract. The other requirements of § 1026.3(h) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a). In particular, because the exemption from § 1026.19(e), (f), and (g) means the consumer will not receive the disclosures of closing costs under § 1026.37 or § 1026.38, the creditor must have information reflecting that the total of closing costs imposed in connection with the transaction is less than one percent of the amount of credit extended and include no charges other than recordation, application, and housing counseling fees, in accordance with § 1026.3(h)(5). Unless an itemization of the amount financed sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a).◄

Section 1026.4—Finance Charge

4(a) Definition.

* * * * *

►6. *Transactions with no seller.* In a transaction where there is no seller, such as a refinancing of an existing extension of credit described in § 1026.20(a), there is no comparable cash transaction. Thus, the exclusion from the finance charge for charges of a type payable in a comparable cash transaction does not apply to such transactions.◄

* * * * *

4(a)(2) Special rule; closing agent charges.

* * * * *

►3. *Closed-end mortgage transactions.* Comments 4(a)(2)–1 and 4(a)(2)–2 do not apply to closed-end transactions secured by real property or a dwelling, pursuant to § 1026.4(g).◄

* * * * *

4(b) Examples of finance charges.

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 1026.4(b) may be excludable under § 1026.4(c), (d), or (e). For example [:

i. Premiums]►, premiums◄ for credit life insurance, shown as an example of a finance charge under § 1026.4(b)(7), may be excluded if the requirements of § 1026.4(d)(1) are met. ►They may not be excluded, however, in closed-end transactions secured by real property or a dwelling, pursuant to § 1026.4(g).◄

[ii. Appraisal fees mentioned in § 1026.4(b)(4) are excluded for real property or residential mortgage transactions under § 1026.4(c)(7).]

* * * * *

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as ►automobile◄ [mortgage] loans. However, if the fee is to be excluded from the finance charge under § 1026.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

* * * * *

4(c)(7) Real-estate related fees.

1. *Real estate or residential mortgage transaction charges.* The list of charges in [§ 1026.4(c)(7)] ►§ 1026.4(c)(7)(i) through (iv)◄ applies ►only to open-end credit plans secured by real property and open-end residential mortgage transactions because § 1026.4(g) makes them inapplicable to closed-end transactions secured by real property or a dwelling. The exclusion of escrowed amounts under § 1026.4(c)(7)(v), on the other hand, applies to all◄ [both to] residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 1026.4(c)(7) must be bona fide and reasonable.

* * * * *

3. *Charges assessed during the loan term.* ►Charges◄ [Real estate or residential mortgage transaction charges] excluded under § 1026.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation and debt suspension coverage.

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8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from ►or through◄ the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation. ►Insurance is available ''from or through a creditor'' only if it is available from the creditor or the creditor's affiliate, as defined under the Bank Holding Company Act, 12 U.S.C. 1841(k).◄

* * * * *

12. *Initial term; alternative.* i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a ►four-year automobile◄ [30-year mortgage] loan has an initial term of ►four◄ [30] years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

* * * * *

4(e) Certain security interest charges.

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 1026.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages ►(for open-end credit; but see § 1026.4(g) regarding closed-end mortgage credit)◄, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). See comment 4(a)–5 regarding the treatment of taxes, generally.

* * * * *

►*4(g) Special rule for closed-end mortgage transactions.*

1. *Applicability of commentary to mortgages.* The commentary to § 1026.4(a)(2) and (c) through (e), other than that under § 1026.4(c)(2), (c)(5), (c)(7) (to the extent it relates to escrowed items as described in paragraph (c)(7)(v) of that section), and (d) (to the extent it relates to property insurance premiums described in paragraph (d)(2) of that section), does not apply to closed-end transactions secured by real property or a dwelling. Commentary under § 1026.4(a) (other than paragraph (a)(2) of that section), (c)(2), (c)(5), (c)(7) (to the extent it relates to escrowed items as described in paragraph (c)(7)(v) of that section), and (d) (to the extent it relates to property insurance premiums described in paragraph (d)(2) of that section), however, does apply to such transactions.

2. *Third-party charges.* Charges imposed by third parties are included in the finance charge if they meet the general definition under § 1026.4(a). Thus, if a third-party charge is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit, it is a finance charge unless it would be payable in a comparable cash transaction. For example, appraisal and credit report fees are included in the finance charge because they meet the definition in § 1026.4(a). This test generally does not depend on whether the creditor requires the service for which the charge is imposed. In addition, charges imposed by closing agents, if the creditor requires that a closing agent conduct the loan closing, generally are included in the finance charge unless otherwise excluded. Insurance premiums generally are included in the finance charge, whether imposed by a closing agent or another insurer, although premiums for property insurance are excluded if § 1026.4(d)(2) is satisfied. Premiums for credit insurance (or fees for debt cancellation or debt suspension agreements) and premiums for lender's coverage under a title insurance policy are included in the finance charge because they are imposed as an incident to the extension of credit. In contrast, premiums for owner's title insurance coverage are not included in the finance charge because they are not imposed as an incident to the extension of credit.

3. *Charges in comparable cash transactions.* While the exclusions in § 1026.4(c) through (e), other than § 1026.4(c)(2), (c)(5), (c)(7)(v), and (d)(2), are inapplicable to closed-end transactions secured by real property or a dwelling, charges in connection with such transactions that are payable in a comparable cash transaction are not included in the finance charge. *See* comment 4(a)–1. For example, property taxes imposed to record the deed evidencing transfer from the seller to the buyer of title to the property are not included in the finance charge because they would be paid even if no credit were extended to finance the purchase. In contrast, fees or taxes imposed to record the mortgage, deed of trust, or other security instrument evidencing the creditor's security interest in the property securing transaction are included in the finance charge because they would not be incurred in a cash transaction.◄

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Subpart C—Closed-End Credit

Section 1026.17—General Disclosure Requirements►

1. *Rules for certain mortgage disclosures.* Section 1026.17(a) and (b) does not apply to the disclosures required by § 1026.19(e), (f), and (g). For those disclosures, rules regarding the disclosures' form are found in §§ 1026.19(g), 1026.37(o), and 1026.38(t) and rules regarding timing are found in § 1026.19(e), (f), and (g).◄

17(a) Form of disclosures.

Paragraph 17(a)(1).

* * * * *

7. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including,

among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR Part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Creditors should not include in the segregated Truth in Lending disclosures additional information. Thus, disclosures should show the large final payment in the payment schedule ►or interest rate and payment summary table under § 1026.18(g) or (s), as applicable,◄ and should not, for example, reflect the other options available to the consumer at maturity.

* * * * *

17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(1).

1. *Legal obligation.* The disclosures shall reflect the [credit] terms to which the [parties] ►consumer and creditor◄ are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c), the disclosures shall reflect the credit terms to which the [parties] ►consumer and creditor◄ are legally bound when the disclosures are provided. The legal obligation is determined by applicable State law or other law. ►Disclosures based on the assumption that the consumer will abide by the terms of the legal obligation throughout the term of the transaction comply with § 1026.17(c)(1).◄ (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 1026.17(c).) The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

2. *Modification of obligation.* The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement ►between the consumer and the creditor◄. But this presumption is rebutted if another agreement between the [parties] ►consumer and creditor◄ legally modifies that note or contract. If the [parties] ►consumer and creditor◄ informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

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3. *Third-party buydowns.* In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments [or buy down the interest rate] for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the consumer's payments for the first two years of the mortgage, giving the consumer an effective rate of 12% for that period.

i. If the [lower rate] ►third-party buydown◄ is reflected in the credit contract between the consumer and the bank, the ►finance charge and all other disclosures affected by it◄ [disclosures] must take the buydown into account ►as an amendment to the contract's interest rate provision◄. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and the [payment schedule disclosures] ►disclosures required under §§ 1026.18(g), 1026.18(s), 1026.37(c), and 1026.38(c), as applicable,◄ must reflect the two payment levels►, except as otherwise provided in those paragraphs◄. However, the amount paid by the seller would not be specifically reflected in the ►disclosure of the finance charge and other disclosures affected by it◄ [disclosures] given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge. ►The seller-paid amount is disclosed, however, as a credit from the seller in the summaries of transactions disclosed pursuant to § 1026.38(j) and (k).◄

ii. If the [lower rate] ►third-party buydown◄ is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the ►disclosure of the finance charge and other disclosures affected by it◄ [disclosures] given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and [payment schedule] ►disclosures required under §§ 1026.18(g), 1026.18(s), 1026.37(c), and 1026.38(c), as applicable,◄ would not take into account the reduction in the interest rate and payment level for the first two years resulting from the buydown. ►The seller-paid amount is, however, disclosed as a credit from the seller in the summaries of transactions disclosed pursuant to § 1026.38(j) and (k).◄

4. *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the payments [or obtain a lower interest rate] on the transaction. Consumer buydowns must be reflected ►as an amendment to the contract's interest rate provision◄ in the ► disclosure of the finance charge and other disclosures affected by it ◄ [disclosures] given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for [a reduction in the interest rate to 12 percent] ►lower payments◄ for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the ► disclosure of the finance charge and other disclosures affected by it ◄ [disclosures] given for the mortgage, the creditor must reflect the terms of the buydown agreement.

i. For example:

* * * * *

C. The [payment schedule] ►disclosures under §§ 1026.18(g) and (s), 1026.37(c), and 1026.38(c), as applicable,◄ must reflect the multiple ►rate and◄ payment levels resulting from the buydown, ►except as otherwise provided in those sections. Further, for example, the transaction is disclosed as a step rate product under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii).◄

ii. The rules regarding consumer buydowns do not apply to transactions known as ''lender buydowns.'' In lender buydowns, a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The ►disclosure of the finance charge and other disclosures affected by it◄

[disclosures] for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. See comment 17(c)(1)–3 for the analogous rules concerning third-party buydowns.

5. *Split buydowns.* In certain transactions, a third party (such as a seller) and a consumer both pay an amount to the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple payment levels►, except as otherwise provided in §§ 1026.18(s), 1026.37(c), and 1026.38(c),◄ and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the ►disclosure of the finance charge and other disclosures affected by it ◄ [disclosures] unless the lower rate is reflected in the credit contract. See the discussion on third-party and consumer buydown transactions elsewhere in the commentary to § 1026.17(c).

* * * * *

8. *Basis of disclosures in variable-rate transactions.* ►Except as otherwise provided in §§ 1026.18(s), 1026.37 and 1026.38, as applicable, the◄ [The] disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase►, except as otherwise provided in §§ 1026.18(s), 1026.37 and 1026.38◄. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. See the commentary to § 1026.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to § 1026.19(a)(2) ►, (e), and (f)◄ for a discussion of the redisclosure in certain mortgage transactions with a variable-rate feature. ►See §§ 1026.37(c) and 1026.38(c) for rules regarding disclosure of variable-rate transactions in the projected payments table for transactions subject to § 1026.19(e) and (f).◄

* * * * *

10. *Discounted and premium variable-rate transactions.* * * *

i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate 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. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 day period before consummation in calculating a composite annual percentage rate.

ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and [payment schedule] ►the disclosures required under §§ 1026.18(g) and (s), 1026.37(c), and 1026.38(c), as applicable◄.

* * * * *

v. Examples of discounted variable-rate transactions include:

A. A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus two percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule ►disclosed pursuant to § 1026.18(g)◄ should show 12 payments of $804.62 and 348 payments of $1,025.31. ►Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), and 1026.38(c) should reflect the effect of this calculation.◄ The finance charge should be $266,463.32 and►, for transactions subject to § 1026.18,◄ the total of payments $366,463.32.

B. Same loan as above, except with a two-percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule ►disclosed pursuant to § 1026.18(g)◄ should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. ►Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), and 1026.38(c) should reflect the effect of this calculation.◄ The finance charge should be $265,234.76 and►, for transactions subject to § 1026.18,◄ the total of payments $365,234.76.

C. Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule ►disclosed pursuant to § 1026.18(g)◄ should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.84, 12 payments of $999.58, and 312 payments of $1,070.04. ►Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), and 1026.38(c) should reflect the effect of this calculation.◄ The finance charge should be $277,040.60, and►, for transactions subject to § 1026.18,◄ the total of payments $377,040.60.

* * * * *

11. *Examples of variable-rate transactions.* Variable-rate transactions include:

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v. ''Price level adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate►, except as otherwise provided in §§ 1026.18(s), 1026.37, and 1026.38, as applicable◄.

12. *Graduated payment adjustable rate mortgages.* These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, ►except as otherwise provided in

§§ 1026.18(s), 1026.37(c), and 1026.38(c)◄, the disclosures should treat these features as follows:

* * * * *

iv. The [schedule of payments discloses] ►disclosures required by § 1026.18(g) and (s) reflect◄ the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the [payment schedule] ►disclosures required by § 1026.18(g) and (s)◄ may require several different levels of payments, even with the assumption that the original interest rate does not increase. ►For transactions subject to § 1026.19(e) and (f), see § 1026.37(c) and its commentary for a discussion of different rules for graduated payment adjustable rate mortgages.◄

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►19. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. Such premiums and rebates must be reflected in accordance with the terms of the legal obligation between the consumer and the creditor. Thus, if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures should reflect its value in the manner and at the time the creditor is obligated to provide it.◄

Paragraph 17(c)(2)(i).

1. *Basis for estimates.* ►Except as otherwise provided in §§ 1026.19, 1026.37, and 1026.38, disclosures◄ [Disclosures] may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it 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. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information will be available by the point of consummation. However, new disclosures may be required under § 1026.17(f) or § 1026.19. ►For purposes 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.◄

2. *Labeling estimates.* Estimates must be designated as such in the segregated disclosures. ►For the disclosures required by § 1026.19(e), use of the Loan Estimate form H–24 in appendix H to this part, pursuant to § 1026.37(o), satisfies the requirement that the disclosure state clearly that the disclosure is an estimate. For all other disclosures, even though they◄ [Even though other disclosures] are based on the same assumption on which a specific estimated disclosure was based, the creditor has [some] flexibility in labeling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labeled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labeling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many disclosures are estimates, the creditor may use a general statement, such as ''all numerical disclosures except the late payment disclosure are estimates,'' as a method to label those disclosures as estimates.

3. *Simple-interest transactions.* If consumers do not make timely payments in a simple-interest transaction, some of the amounts calculated for Truth in Lending disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors may label disclosures as estimates in these transactions►, except as otherwise provided by § 1026.19◄. For example, because the finance charge and total of payments may be larger than disclosed if consumers make late payments, creditors may label the finance charge and total of payments as estimates. On the other hand, creditors may choose not to label disclosures as estimates►. In all cases, creditors◄ [and may] ►comply with § 1026.17(c)(2)(i) by basing◄ [base all] 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 [inaccuracies] ►differences◄ resulting from consumers' payment patterns.

Paragraph 17(c)(2)(ii).

1. *Per-diem interest.* Section 1026.17(c)(2)(ii) applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 1026.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 1026.18(d)(1). ►For purposes of transactions subject to § 1026.19(e) and (f), the creditor shall disclosure the actual amount of per diem interest that will be collected at consummation, subject only to the disclosure rules in those sections.◄

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Paragraph 17(c)(4).

1. *Payment schedule irregularities.* When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule ► pursuant to § 1026.18(g) or the disclosures required pursuant to §§ 1026.18(s), 1026.37(c), or 1026.38(c)◄, finance charge, annual percentage rate, and other terms. For example:

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Paragraph 17(c)(5).

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2. *Future event as maturity date.* An obligation whose maturity date is

determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under § 1026.18(i) are inapplicable ►and demand disclosures under § 1026.38(l)(2) are answered in the negative◄. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur and ►, except as otherwise provided in § 1026.19(e) and (f),◄ may indicate the basis for the creditor's estimate, as noted in the commentary to § 1026.17(a).

3. *Demand after stated period.* Most demand transactions contain a demand feature that may be exercised at any point during the term, but certain transactions convert to demand status only after a fixed period. [For example, in States prohibiting due-on-sale clauses, the Federal National Mortgage Association (FNMA) requires mortgages that it purchases to include a call option rider that may be exercised after 7 years. These mortgages are generally written as long-term obligations, but contain a demand feature that may be exercised only within a 30-day period at 7 years.] The disclosures for [these transactions] ►a transaction that converts to demand status after a fixed period◄ should be based upon the legally agreed-upon maturity date. Thus, ►for example,◄ if a mortgage containing [the 7-year FNMA call option] ►a call option that the creditor may exercise during the first 30 days of the eighth year after loan origination◄ is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under § 1026.18(i)►or § 1026.38(l)(2), as applicable◄.

4. *Balloon mortgages.* Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of five years and a payment schedule based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. In this type of mortgage, disclosures should be based on the five-year term. ►See §§ 1026.37(c) and 1026.38(c) and their commentary for projected payment disclosures for balloon payment mortgages.◄

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17(d) Multiple creditors; multiple consumers.

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2. *Multiple consumers.* When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 1026.23, although the disclosures required under § 1026.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program. ►In addition, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any consumer with 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, must be given before consummation to each consumer who has the right to rescind, even if such consumer is not an obligor. *See* §§ 1026.2(a)(11), 1026.17(b), 1026.19(a), 1026.19(f), and 1026.23(b).◄

17(e) Effect of subsequent events.

1. *Events causing inaccuracies.* ►Subject to § 1026.19(e) and (f), inaccuracies◄ [Inaccuracies] in disclosures are not violations if attributable to events occurring after the disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to make new disclosures under § 1026.17(f) or § 1026.19 if the events occurred between disclosure and consummation or under § 1026.20 if the events occurred after consummation. ►For rules regarding permissible changes to the information required to be disclosed by § 1026.19(e) and (f), see § 1026.19(e)(3) and (f)(4) and their commentary.◄

17(f) Early disclosures.

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in [this section,] ►§ 1026.17(f)◄ even if the [initial] ►prior◄ disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. [*General.*] ►*Transactions not secured by real property.*◄ A. ►For transactions not secured by real property, if◄ [If] disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction ►not secured by real property◄, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

[ii. *Nonmortgage loan.*] ►C.◄ If disclosures ►for transactions not secured by real property◄ are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* § 1026.18(d)(2) of this part.

[iii.] ►ii. *Reverse mortgages.*◄[*Mortgage loan*]. [At] ►In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), at◄ the time [TILA disclosures] ►the disclosures required by § 1026.19(a)◄ are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. [Assuming there were no other changes requiring redisclosure, the] ►The◄ creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

►iii. *Mortgages other than reverse mortgages and mortgage loans not secured by real property.* For transactions secured by real property other than reverse mortgages, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a

prepaid finance charge. The creditor must make the disclosures required by § 1026.19(f) three days before consummation, and the disclosures required by § 1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.◄

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. ►See § 1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property.◄

3. *Content of new disclosures.* ►Except as provided by § 1026.19(e) and (f), if◄[If] redisclosure is required, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed. *See* the commentary to § 1026.19(a)(2).

4. *Special rules.* In mortgage transactions subject to § 1026.19 ►(a)◄, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance. When subsequent events occur after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 1026.20.

* * * * *

17(g) Mail or telephone orders—delay in disclosures.

1. *Conditions for use.* ►Except for extensions of credit subject to § 1026.19(a) or (e), (f), and (g), when◄ [When] the creditor receives a mail or telephone request for credit, the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

* * * * *

17(h) Series of sales—delay in disclosures.

1. *Applicability.* ►Except for extensions of credit covered by § 1026.19(a) or (e), (f), and (g), the ◄ [The] creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment is due on the current sale, assuming the two conditions in this paragraph are met. If those conditions are not met, the general timing rules in § 1026.17(b) apply.

* * * * *

Section 1026.18—Content of Disclosures

* * * * *

►3. *Scope of coverage.*

i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. Accordingly, the disclosures required by § 1026.18 apply only to closed-end consumer credit transactions that are:

A. Unsecured;

B. Secured by personal property that is not a dwelling;

C. Secured by personal property that is a dwelling and is not also secured by real property; or

D. Reverse mortgages subject to § 1026.33.

ii. Of the foregoing transactions that are subject to § 1026.18, the creditor discloses a payment schedule pursuant to § 1026.18(g) for those described in paragraphs i.A and i.B of this comment. For transactions described in paragraphs i.C and i.D of this comment, the creditor discloses an interest rate and payment summary table pursuant to § 1026.18(s). See also 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 1026.19(e) and (f).

iii. Because § 1026.18 does not apply to transactions secured by real property, other than reverse mortgages, references in the section and its commentary to ''mortgages'' refer only to transactions described in paragraphs i.C and i.D of this comment, as applicable.◄

* * * * *

18(b) Amount financed.

* * * * *

[2. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. At the creditor's option, these amounts may be either reflected in the Truth in Lending disclosures or disregarded in the disclosures. If the creditor chooses to reflect them in the § 1026.18 disclosures, rather than disregard them, they may be taken into account in any manner as part of those disclosures.]

* * * * *

Paragraph 18(b)(2).

1. *Adding other amounts.* Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are [real estate settlement charges and premiums for voluntary credit life and disability insurance] ►government recording fees for deeds and premiums for insurance against loss of or damage to property◄ excluded from the finance charge under § 1026.4. This paragraph does not include any amounts already accounted for under § 1026.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

* * * * *

18(c) Itemization of amount financed.

* * * * *

4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. ►Reverse mortgages◄ [Transactions] subject to RESPA ►and § 1026.18◄ are exempt from the requirements of § 1026.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§ 1026.18(c) and 1026.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 1026.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§ 1026.18(c) and 1026.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of § 1026.17(a) are met.

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Paragraph 18(c)(1)(iv).

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2. *Prepaid mortgage insurance premiums.* ►Regulation X under◄ RESPA►, 12 CFR 1024.8,◄ requires creditors to give consumers a settlement statement disclosing the costs associated with ►reverse◄ mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1003 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA

shall be deemed to be accurate for purposes of Regulation Z.

* * * * *

18(f) Variable rate.

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Paragraph 18(f)(1)(iv).

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2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

i. Demand obligations with no alternate maturity date.

ii. Private education loans as defined in § 1026.46(b)(5).

[iii. Multiple-advance construction loans disclosed pursuant to Appendix D, Part I.]

* * * * *

18(g) Payment schedule.

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4. *Timing of payments.*

i. *General rule.* * * *

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of [home] repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 1026.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. *See* comment 17(a)(1)–5.iii.

5. ►[Reserved]◄[*Mortgage insurance.* The payment schedule should reflect 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. The payment schedule must reflect the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)]

6. *Mortgage transactions.* Section 1026.18(g) applies [only] to closed-end transactions, other than transactions that are subject to § 1026.18(s)►or § 1026.19(e) and (f)◄. Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling►, unless they are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property, other than reverse mortgages◄. Thus, if a closed-end consumer credit transaction is secured by real property or a dwelling ►and the transaction is a reverse mortgage or the dwelling is personal property◄, the creditor discloses an interest rate and payment summary table in accordance with § 1026.18(s) [and does not observe]. ►*See* comment 18(s)–4. If a closed-end consumer credit transaction is secured by real property and is not a reverse mortgage, the creditor discloses a projected payments table in accordance with §§ 1026.37(c) and 1026.38(c), as required by § 1026.19(e) and (f). In all such cases, the creditor is not subject to◄ the requirements of § 1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling ►(for example, if it is unsecured or secured by an automobile)◄, the creditor discloses a payment schedule in accordance with § 1026.18(g) and [does not observe] ►is not subject to◄ the requirements of § 1026.18(s) ►or §§ 1026.37(c) and 1026.38(c)◄.

* * * * *

Paragraph 18(g)(2).

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. [This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease or increase in the premium due.] In addition, in transactions where payments vary because interest and principal are paid at different intervals, the two series of payments may be disclosed separately and the abbreviated payment schedule may be used for the interest payments. For example, in transactions with fixed quarterly principal payments and monthly interest payments based on the outstanding principal balance, the amount of the interest payments will change quarterly as principal declines. In such cases the creditor may treat the interest and principal payments as two separate series of payments, separately disclosing the number, amount, and due dates of principal payments, and, using the abbreviated payment schedule, the number, amount, and due dates of interest payments. This option may be used when interest and principal are scheduled to be paid on the same date of the month as well as on different dates of the month. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

2. *Combined payment schedule disclosures.* Creditors may combine the option in this paragraph with the general payment schedule requirements in transactions where only a portion of the payment schedule meets the conditions of § 1026.18(g)(2). For example, in a ►transaction◄ [graduated payment mortgage] where payments rise sharply for five years and then decline over the next 25 years [because of decreasing mortgage insurance premiums], the first five years would be disclosed under the general rule in § 1026.18(g) and the next 25 years according to the abbreviated schedule in § 1026.18(g)(2).

* * * * *

18(k) Prepayment.

1. *Disclosure required.* The creditor must give a definitive statement of whether or not a ►prepayment◄ penalty will be imposed or a ►prepayment◄ rebate will be given.

i. The fact that no ►prepayment◄ penalty will be imposed may not simply be inferred from the absence of a ►prepayment◄ penalty disclosure; the creditor must indicate that prepayment will not result in a ►prepayment◄ penalty.

ii. If a ►prepayment◄ penalty or ►prepayment◄ refund is possible for one type of prepayment, even though not for all, a positive disclosure is

required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

iii. Any difference in ►prepayment◄ rebate or ►prepayment◄ penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and ►prepayment◄ penalties are required. Sample form H–15 in appendix H to this part illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 1026.18(k). A prepaid finance charge is not considered a ►prepayment◄ penalty under § 1026.18(k)(1), nor does it require a disclosure under § 1026.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under § 1026.18(k)(2). If a disclosure is made under § 1026.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower ''will not be entitled to a refund of the prepaid finance charge'' or some other term that describes the finance charge.

Paragraph 18(k)(1).►

1. *Examples of prepayment penalties.* For purposes of § 1026.18(k)(1), the following are examples of prepayment penalties:

i. 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. ''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. For example, ''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). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. 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.

iii. A minimum finance charge in a simple interest transaction.

2. *Fees that are not prepayment penalties.* For purposes of § 1026.18(k)(1), fees which are not prepayment penalties include, for example:

i. 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.

ii. Loan guarantee fees.◄

[1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term penalty as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

i. Interest charges for any period after prepayment in full is made. (See the commentary to § 1026.17(a)(1) regarding disclosure of interest charges assessed for periods after prepayment in full as directly related information.)

ii. A minimum finance charge in a simple-interest transaction. (See the commentary to § 1026.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example, loan guarantee fees.**]**

Paragraph 18(k)(2).

1. *Rebate of finance charge.* i. This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

A. Precomputed finance charges such as add-on charges. ►This includes computing a refund of unearned finance charge, such as precomputed 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). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.◄

B. Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

ii. No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

* * * * *

18(r) Required deposit.

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6. *Examples of amounts excluded.* The following are among the types of deposits that need not be treated as required deposits:

i. Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

ii. Required property insurance escrow on a mobile home transaction.

iii. Refund of interest when the obligation is paid in full.

iv. Deposits that are immediately available to the consumer.

v. Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

vi. ►**[**Reserved**]**◄ **[**Escrow of condominium fees.**]**

vii. Escrow of loan proceeds to be released when the repairs are completed.

18(s) Interest rate and payment summary for mortgage transactions.

1. *In general.* Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for ►reverse mortgages and certain transactions secured by dwellings that are personal property◄ **[**mortgage loans**]**. The information in § 1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to model clause H–4(E), H–4(F), H–4(G), or H–

4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word ''monthly'' but the periodic payments are not due monthly, the creditor should use the appropriate term, such as ''bi-weekly'' or ''quarterly.'' In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 1026.18(s) in § 1026.18(s)(7).

* * * * *

►4. *Scope of coverage in relation to § 1026.19(e) and (f).* Section 1026.18(s) applies to transactions secured by a real property or a dwelling, other than transactions that are subject to § 1026.19(e) and (f). Those provisions apply to closed-end transactions secured by real property, other than reverse mortgages. Accordingly, § 1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling that is personal property (such as a mobile home that is not deemed real property under State or other applicable law).◄

* * * * *

18(s)(3) Payments for amortizing loans.

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Paragraph 18(s)(3)(i)(C).

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2. *Mortgage insurance* ►*or any functional equivalent*◄. ►For purposes of § 1026.18(s), ''mortgage insurance'' means insurance against the nonpayment of, or default on, an individual mortgage. ''Mortgage guarantees'' (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee) provide coverage similar to mortgage insurance, even if not technically considered insurance under State or other applicable law. For purposes of § 1026.18(s), ''mortgage insurance or any functional equivalent'' includes any mortgage guarantee.◄ Payment amounts under § 1026.18(s)(3)(i) should reflect the consumer's mortgage insurance payments ►or any functionally equivalent fee◄ 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. The payment amount must reflect the terms of the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, payment amounts disclosed through the 130th payment should reflect premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, payments disclosed through the 128th payment should reflect premium payments. The escrow amount reflected on the disclosure should include mortgage insurance premiums even if they are not escrowed and even if there is no escrow account established for the transaction.

* * * * *

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

19(a)(1)(i) Time of disclosures.

1. *Coverage.* This section requires early disclosure of credit terms in ►reverse◄ mortgage transactions ►subject to § 1026.33◄ that are secured by a consumer's dwelling ⟦(other than home equity lines of credit subject to § 1026.40 or mortgage transactions secured by an interest in a timeshare plan)⟧ that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X. To be covered by § 1026.19►(a)◄, a transaction must be a Federally related mortgage loan under RESPA. ''Federally related mortgage loan'' is defined under RESPA (12 U.S.C. 2602) and Regulation X (12 CFR 1024.2), and is subject to any interpretations by the Bureau.

* * * * *

⟦*19(a)(5) Timeshare plans.*

Paragraph 19(a)(5)(ii).

1. *Timing.* A mortgage transaction secured by a consumer's interest in a ''timeshare plan,'' as defined in 11 U.S.C. 101(53D), that is also a Federally related mortgage loan under RESPA is subject to the requirements of § 1026.19(a)(5) instead of the requirements of § 1026.19(a)(1) through § 1026.19(a)(4). *See* comment 19(a)(1)(i)–1. Early disclosures for transactions subject to § 1026.19(a)(5) must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of ''business day'' in § 1026.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—applies for purposes of § 1026.19(a)(5)(ii). *See* comment 2(a)(6)–1. These timing requirements are different from the timing requirements under § 1026.19(a)(1)(i). Timeshare transactions covered by § 1026.19(a)(5) may be consummated any time after the disclosures required by § 1026.19(a)(5)(ii) are provided.

2. *Use of estimates.* If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 1026.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures except the late-payment disclosure are estimates'') instead of separately labeling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 1026.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 1026.17(a)(1).

3. *Written application.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–3 in determining whether a ''written application'' has been received.

4. *Denied or withdrawn applications.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–4 in determining that disclosures are not required by § 1026.19(a)(5)(ii) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

5. *Itemization of amount financed.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–5 in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 1026.18(c) to provide an itemization of the amount financed.

Paragraph 19(a)(5)(iii).

* * * * *

1. *Consummation or settlement.* For extensions of credit secured by a consumer's timeshare plan, when corrected disclosures are required, they must be given no later than ''consummation or settlement.''

''Consummation'' is defined in § 1026.2(a). ''Settlement'' is defined in Regulation X (12 CFR 1024.2(b)) and is subject to any interpretations issued by the Bureau. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement, despite the general rule in comment 17(c)(1)–8 that variable-rate disclosures should be based on the terms in effect at consummation.

2. *Content of new disclosures.* Creditors may rely on comment 19(a)(2)(ii)–2 in determining the content of corrected disclosures required under § 1026.19(a)(5)(iii).❙

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►*19(e) Mortgage loans secured by real property—Early disclosures.*

19(e)(1)(i) Creditor.

1. *Requirements.* Section 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. These disclosures must be provided in good faith. 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.

19(e)(1)(ii) Mortgage broker.

1. *Requirements.* A mortgage broker may provide the disclosures required under § 1026.19(e)(1)(i) instead of the creditor. 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 to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). For example, comment 19(e)(4)–2 states that creditors 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). ''Mortgage broker'' could not be read in place of ''creditor'' in comment 19(e)(4)–2 because the mortgage brokers are not responsible for the disclosures required by § 1026.19(f)(1)(i).

2. *Broker responsibilities.* If a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must comply with the requirements of § 1026.19(e). For example, 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). If the mortgage 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. If a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25. For example, if a mortgage broker issues the disclosure required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i), and must maintain such records in an electronic, machine-readable format, in compliance with § 1026.25(c)(1)(iii).

3. *Creditor responsibilities.* If a mortgage broker issues any disclosure required under § 1026.19(e) in the creditor's place, the creditor remains responsible under § 1026.19(e) for ensuring that the requirements of § 1026.19(e) have been satisfied. For example, the creditor must ensure that the 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). The creditor does not satisfy the requirements of § 1026.19(e) if it provides duplicative disclosures. For example, a creditor does not meet its burden by issuing disclosures required under § 1026.19(e) that mirror ones already issued by the broker for the purpose of demonstrating that the consumer received timely disclosures. If the broker provides an erroneous disclosure, the creditor is responsible and may not issue a revised disclosure correcting the error. The creditor is expected to maintain communication with the broker to ensure that the broker is acting in place of the creditor. Disclosures provided by a broker in accordance with § 1026.19(e)(1)(ii) satisfy the creditor's obligation under § 1026.19(e)(1)(i).

4. *Broker provision of preliminary written estimates specific to the consumer.* Section 1026.19(e)(2)(ii) requires creditors to provide consumers with a disclosure indicating that the written estimate is not the Loan Estimate required by RESPA and TILA, if a creditor provides a consumer with certain written estimates of specific credit terms or costs. Section 1026.19(e)(1)(ii) states that, if a mortgage broker provides any disclosure required by § 1026.19(e), the mortgage broker must comply with the requirements in § 1026.19(e) related to such disclosure. Thus, § 1026.19(e)(1)(ii) requires mortgage brokers to comply with § 1026.19(e)(2)(ii) if a mortgage broker provides any disclosures under § 1026.19(e). For example, 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.

19(e)(1)(iii) Timing.

1. *Timing and use of estimates.* The disclosures required by § 1026.19(e)(1)(i) must be delivered not later than three business days after the creditor receives the consumer's application. For example, if an application is received on Monday, the creditor satisfies this requirement by either hand delivering the disclosures on or before Thursday, or placing them in the mail on or before Thursday, assuming each weekday is a business day. For purposes of § 1026.19(e)(1)(iii), the term ''business day'' means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)–2. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available.

2. *Waiting period.* 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. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures, because, for the purposes of § 1026.19(e)(1)(iii), Saturday is a business day, pursuant to § 1026.2(a)(6).

3. *Denied or withdrawn applications.* The creditor may 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. In that case, or if the consumer withdraws the application within the

three-business-day period, the creditor need not make the disclosures required under § 1026.19(e)(1)(i). If the creditor fails to provide 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). If, however, the consumer amends 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. But the amended application is a new application subject to § 1026.19(e)(1)(i).

19(e)(1)(iv) Delivery.

1. *Mail delivery.* Section 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 presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. This presumption may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday, thereby rebutting the presumption that the disclosures were received on Thursday, three business days after the disclosures were sent.

2. *Electronic delivery.* The presumption established in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. For example, if a creditor sends a disclosure required under § 1026.19(e) via email on Monday, pursuant to § 1026.19(e)(1)(iv) the consumer is presumed to have received the disclosure on Thursday, three business days later. However, the creditor may rebut the presumption by providing evidence that the consumer received the emailed disclosures earlier. Creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). For example, if a creditor delivers the disclosures required by § 1026.19(e)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.17(a)(1), and the creditor does not comply with § 1026.19(e)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(e)(1)(iii).

19(e)(1)(v) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* 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 consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. 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. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

2. *Examples of waivers within the seven-business-day waiting period.* If the early disclosures are delivered to the consumer in person on Monday, June 1, the seven-business-day waiting period ends on Tuesday, June 9. If on Monday, June 1, the consumer executes a waiver of the seven-business-day waiting period, the final disclosures required by § 1026.19(f)(1)(i) could then be delivered three days before consummation, as required by § 1026.19(f)(1)(ii), on Tuesday, June 2, and the loan can be consummated on Friday, June 5.

19(e)(1)(vi) Shopping for settlement service providers.

1. *Permission to shop.* Section 1026.19(e)(1)(vi)(A) states that the creditor may impose reasonable minimum requirements regarding the qualifications of the provider. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. Similarly, the creditor may require that the homeowner's insurance carrier chosen by the consumer have a minimum rating by an independent insurance rating service. In contrast, a creditor does not permit a consumer to shop for purposes of § 1026.19(e)(1)(vi) if the creditor requires the consumer to choose a provider from a list provided by creditor. The requirements of § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).

2. *Disclosure of services for which the consumer may shop.* Section 1026.19(e)(1)(vi)(C) requires the creditor to identify the services for which the consumer is permitted to shop in the disclosures provided pursuant to § 1026.19(e)(1)(i). See § 1026.37(f)(3) regarding the content and format for this disclosure.

3. *Written list of providers.* If the creditor permits the consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(C) requires the creditor to 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. The settlement service providers identified on such written list must correspond to the settlement services for which the consumer may shop, disclosed pursuant to § 1026.37(f)(3). See form H–27 in appendix H to this part for a model list. See also comment 19(e)(1)(ii)–4 regarding mortgage broker provision of the written list of settlement service providers.

4. *Identification of available providers.* Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers that are available to the consumer. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) 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. Similarly, 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. If the creditor determines that there is only one available settlement service provider, the creditor need only identify that provider on the written list.

5. *Statement that consumer may choose different provider.* Section 1026.19(e)(1)(vi)(C) requires the creditor to include in the written list a statement that the consumer may choose a provider that is not included on that list. See form H–27 in appendix H to this part for an example of such a statement.

6. *Additional information on written list.* 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. The creditor may also identify in the written list providers of services for which the consumer is not permitted to shop, provided that the creditor clearly and expressly

distinguishes those services from the services for which the consumer is permitted to shop. This may be accomplished by placing the services under different headings. For example, if the list provided pursuant to § 1026.19(e)(1)(vi)(C) identifies providers of pest inspections, homeowner's insurance, and surveys, but the consumer may select a provider, other than those identified on the list, for only the homeowner's insurance carrier and surveyor, then the list must specifically inform the consumer that the consumer is permitted to select a provider, other than a provider identified on the list, for only the homeowner's insurance carrier and the surveyor.

7. *Relation to RESPA and Regulation X.* Section 1026.19 does not prohibit creditors from including affiliates on the written list under § 1026.19(e)(1)(vi). However, a creditor that includes affiliates on the written list must also comply with 12 CFR 1024.15. Furthermore, the written list is a ''referral'' under 12 CFR 1024.14(f).

19(e)(2) Pre-disclosure activity.

19(e)(2)(i) Imposition of fees on consumer.

19(e)(2)(i)(A) Fee restriction.

1. *Fees restricted.* 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 allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B).

2. *Intent to proceed.* A consumer may indicate intent to proceed with a transaction 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 creditor must document this communication to satisfy the requirements of § 1026.25. For example, oral communication in person immediately upon delivery of the disclosures required by § 1026.19(e)(1)(i) is sufficiently indicative of intent. Oral communication over the phone, written communication via email, or signing a pre-printed form are also sufficiently indicative of intent if such actions occur after receipt of the disclosures required by § 1026.19(e)(1)(i). However, a creditor may not deliver the disclosures, wait for some period of time for the consumer to respond, and then charge the consumer a fee for an appraisal if the consumer does not respond, even if the creditor disclosed that it would do so.

3. *Timing of fees.* 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). The consumer must receive the disclosures required by this section and indicate an intent to proceed with the mortgage loan transaction before paying or incurring any other fee imposed by a creditor or other person in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i).

4. *Collection of fees.* A creditor complies with § 1026.19(e)(2)(i)(A) if:

i. The creditor receives a consumer's written application directly from the consumer and does not collect any fee, other than a fee for obtaining a consumer's credit report, until the consumer receives the early mortgage loan disclosure and indicates an intent to proceed.

ii. A third party submits a consumer's written application to a creditor and both the creditor and third party do not collect any fee, other than a fee for obtaining a consumer's credit report, until the consumer receives the early mortgage loan disclosure from the creditor and indicates an intent to proceed.

iii. A third party submits a consumer's written application to a creditor following a different creditor's denial of the consumer's application (or following the consumer's withdrawal of that application), and, if a fee already has been assessed, the new creditor or third party does not collect or impose any additional fee until the consumer receives an early mortgage loan disclosure from the new creditor and indicates an intent to proceed.

5. *Fees ''imposed by'' a person.* 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. For example, if a creditor requires the consumer to provide a $500 check to pay for a ''processing fee'' before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed, then the creditor does not comply with § 1026.19(e)(2), even if the creditor states that the check will not be cashed until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer indicates intent to proceed. Similarly, a creditor does not comply with the requirements of § 1026.19(e)(2) if the creditor requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed, even if the creditor promises not to charge the consumer's credit card for the $500 processing fee until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer subsequently indicates intent to proceed. In contrast, a creditor complies with § 1026.19(e)(2) if the creditor requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and subsequently indicates intent to proceed if the consumer's authorization is only to pay for the cost of a credit report. This is so even if the creditor maintains the consumer's credit card number on file and charges the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) are received and the consumer subsequently indicates intent to proceed, provided that the creditor requested and received a separate authorization for the processing fee 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.

1. *Requirements.* 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. The fee also must be bona fide and reasonable in amount. For example, a creditor may collect a fee for obtaining a credit report if it is in the creditor's ordinary course of business to obtain a credit report. If the criteria in § 1026.19(e)(2)(i)(B) are met, the creditor must accurately describe or refer to this fee, for example, as a ''credit report fee.''

19(e)(2)(ii) Written information provided to consumer.

1. *Requirements.* Section 1026.19(e)(2)(ii) requires the creditor to include a notice on certain written estimates provided to the consumer before the disclosures required by § 1026.19(e)(1)(i) are provided. The requirement applies only to written information specific to the consumer. For example, if the creditor provides a document showing the estimated monthly payment for a mortgage loan, and the estimate was based on the estimated loan amount and the consumer's estimated credit score, then the creditor must include the warning on the document. In contrast, if the creditor provides the consumer with a preprinted list of closing costs common in the consumer's area, the creditor

need not include the warning. Similarly, the warning would not be required on a preprinted list of available rates for different loan products. This requirement does not apply to an advertisement, as defined in § 1026.2(a)(2). See also comment 19(e)(1)(ii)–4 regarding mortgage broker provision of written estimates specific to the consumer.

19(e)(2)(iii) Verification of information.

1. *Requirements.* 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 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. For example, 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). See also § 1026.2(a)(3) and the related commentary regarding the definition of application.

19(e)(3) Good faith determination for estimates of closing costs.

19(e)(3)(i) General rule.

1. *Requirement.* Section 1026.19(e)(3)(i) provides 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 upon the consumer exceeds the amount originally disclosed. Although § 1026.19(e)(3)(ii) and (iii) provide exceptions to the general rule, the charges that remain subject to § 1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

iii. Fees paid to an affiliate of the creditor or a mortgage broker.

iv. Fees paid to an unaffiliated third party if the creditor did not permit the consumer to select a third party service provider, other than those providers identified on the written list provided pursuant to § 1026.19(e)(1)(vi).

v. Transfer taxes.

2. *Fees ''paid to'' a person.* For purposes of § 1026.19(e), a fee is not considered ''paid to'' a person if the person does not retain the fee, or if the person retains the fee as reimbursement for an amount it has already paid to another party. For example, if a consumer pays the creditor an appraisal fee in advance of the real estate closing and the creditor subsequently uses those funds to pay another party for an appraisal, then the appraisal fee is not ''paid to'' the creditor for the purposes of § 1026.19(e). Similarly, if a creditor pays for an appraisal in advance of the real estate closing and the consumer pays the creditor an appraisal fee at the real estate closing, then the fee is not ''paid to'' the creditor for the purposes of § 1026.19(e), even though the creditor retains the fee, because the payment is a reimbursement for an amount already paid.

3. *Transfer taxes and recording fees.* See comments 37(g)(1)–1, –2, –3 and –4 for a discussion of the difference between transfer taxes and recording fees.

4. *Specific credits, rebates, or reimbursements.* 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 specific fee, such as a credit, rebate, or reimbursement, is not subject to the good faith determination requirements in § 1026.19(e)(3)(i) or (ii) if the increased specific credit, rebate, or reimbursement actually reduces the cost to the consumer. Specific credits, rebates, or reimbursements may not be disclosed or revised in a way that achieves what would otherwise violate the requirements of § 1026.19(e)(3)(i) and (ii). For example, assume the creditor originally disclosed a $100 pest inspection fee credit to cover the cost of a $100 pest inspection fee paid to an affiliated provider and subject to § 1026.19(e)(3)(i). If the pest inspection fee subsequently increases to $150, and the creditor increases the amount of the pest inspection fee credit from $100 to $150 to pay for the increase, the credit is not being revised in a way that would otherwise violate the requirements of § 1026.19(e)(3)(i) because, although the disclosed amount increased, the amount paid by the consumer did not. However, if the creditor disclosed a $150 pest inspection fee credit to cover the cost of a $150 pest inspection fee paid to an affiliated provider and subject to § 1026.19(e)(3)(i), and the creditor subsequently decreases the pest inspection fee credit from $150 to $100, even though the pest inspection fee remained at $150, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the disclosed amount did not increase, the amount paid by the consumer for this service did increase.

5. *Lender credits.* The disclosure of ''lender credits,'' as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). These 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). These non-specific credits are negative charges to the consumer—as the lender credit decreases, the overall cost to the consumer increases. Thus, 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) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). For example, if the creditor provides a $750 estimate for lender credits in the disclosures required by § 1026.19(e)(1)(i), but only a $500 lender credit is actually provided to the consumer at the real estate closing, the creditor has not complied with § 1026.19(e)(3)(i) because, although the actual lender credit was less than the estimated lender credit provided in the revised disclosures, the overall cost to the consumer increased and, therefore, did not comply with § 1026.19(e)(3)(i). See also § 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.

19(e)(3)(ii) Limited increases permitted for certain charges.

1. *Requirements.* Section 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. Section 1026.19(e)(3)(ii) permits this limited increase for only the following items:

i. Fees paid to an unaffiliated third party if the creditor permitted the consumer to select a settlement service provider that is not on the list provided pursuant to § 1026.19(e)(1)(vi) and discloses that the consumer may do so on that list.

ii. Recording fees.

2. *Aggregate increase limited to ten percent.* 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. For example, if, in the disclosures provided pursuant to § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the

settlement agent fee) equals $1,000, then the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds ten percent (*i.e.,* exceeds $330), provided that the sum of all such charges does not exceed ten percent (*i.e.,* $1,100). Section 1026.19(e)(3)(ii) also provides flexibility in disclosing individual fees by focusing on aggregate amounts. For example, assume that, in the disclosures provided pursuant to § 1026.19(e)(1)(i), the sum of all estimated charges subject to § 1026.19(e)(3)(ii) equals $1,000. If the creditor does not include an estimated charge for a notary fee but a $10 notary fee is charged to the consumer, and the notary fee is subject to § 1026.19(e)(3)(ii), then the creditor does not violate § 1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to § 1026.19(e)(3)(ii) does not exceed $1,100, even though an individual notary fee was not included in the estimated disclosures provided pursuant to § 1026.19(e)(1)(i).

3. *Services for which the consumer may, but does not, select a settlement service provider.* Good faith is determined pursuant to § 1026.19(e)(3)(ii), instead of § 1026.19(e)(3)(i), if the creditor permits the consumer to shop for a settlement service provider, consistent with § 1026.19(e)(1)(vi)(A). Section 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 for that service consistent with § 1026.19(e)(1)(vi)(A), but the consumer either does not select a settlement service provider or chooses a settlement service provider identified by the creditor on the list, 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). For example, if, in the disclosures provided pursuant to §§ 1026.19(e)(1)(i) and 1026.37(f)(3), a creditor discloses an estimated fee for an unaffiliated settlement agent and permits the consumer to shop for that service, but the consumer either does not choose a provider, or chooses a provider identified by the creditor on the written list provided pursuant to § 1026.19(e)(1)(vi)(C), then the estimated settlement agent fee is included with the fees that may, in aggregate, increase by no more than ten percent for the purposes of § 1026.19(e)(3)(ii). If, however, the consumer chooses a provider that is not on the written list, then good faith is determined according to § 1026.19(e)(3)(iii).

4. *Recording fees.* Section 1026.19(e)(3)(ii) provides that an estimate of recording fees is in good faith if the conditions specified in § 1026.19(e)(3)(ii)(A), (B), and (C) are satisfied. However, the condition specified in § 1026.19(e)(3)(ii)(B), that the charge not be paid to an affiliate of the creditor, is inapplicable for recording fees. 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, estimates of recording fees need only satisfy the condition specified in § 1026.19(e)(3)(ii)(A) to meet the requirements of § 1026.19(e)(3)(ii).

19(e)(3)(iii) Variations permitted for certain charges.

1. *Good faith requirement for prepaid interest, property insurance premiums, and impound amounts.* 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. Differences between the amounts of such charges disclosed under § 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, 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. For example, if the creditor requires homeowner's insurance but fails to include a homeowner's insurance premium on the estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose does not comply with § 1026.19(e)(3)(iii). However, if the creditor does not require flood insurance and the subject property is located in an area where floods frequently occur, but not specifically located in a zone where flood insurance is required, failure to include flood insurance on the original estimates provided pursuant to § 1026.19(e)(1)(i) does not constitute a lack of good faith under § 1026.19(e)(3)(iii). Or, if the creditor knows that the loan must close on the 15th of the month but estimates prepaid interest to be paid from the 30th of that month, then the under-disclosure does not comply with § 1026.19(e)(3)(iii).

2. *Good faith requirement for required services chosen by the consumer.* If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required by § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges 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. However, 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. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided pursuant to § 1026.19(e)(1)(vi)(C), and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). 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), 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).

3. *Good faith requirement for non-required services chosen by the consumer.* 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. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor may include the charge for that item in the disclosures provided pursuant to § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). However, 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. For example, if the subject property is located in a jurisdiction where

consumers are customarily represented at closing by their own attorney, but the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).

19(e)(3)(iv) Revised estimates.

1. *Requirement.* Pursuant to § 1026.19(e)(3)(i) and (ii), good faith is determined by calculating the difference between the estimated charges originally provided pursuant to § 1026.19(e)(1)(i) and the actual charges paid by the consumer. Section 1026.19(e)(3)(iv) provides the exception to this rule. Pursuant to § 1026.19(e)(3)(iv), a charge paid by or imposed on the consumer may exceed the originally estimated charge if the revision is due to one of the reasons specified in § 1026.19(e)(3)(iv)(A) through (F).

2. *Actual increase.* The revised disclosures may reflect increased charges only to the extent that the reason for revision, as identified in § 1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and other charges unrelated to the rate lock extension may not change.

3. *Documentation requirement.* In order to comply with § 1026.25, creditors must retain records demonstrating compliance with the requirements of § 1026.19(e). For example, if revised disclosures are provided because of a changed circumstance under § 1026.19(e)(3)(iv)(A) affecting settlement costs, the creditor must be able to show compliance with § 1026.19(e) by documenting the original estimate of the cost at issue, explaining the reason for revision and how it affected settlement costs, showing that the corrected disclosure increased the estimate only to the extent that the reason for revision actually increased the cost, and showing that the timing requirements of § 1026.19(e)(4) were satisfied. However, the documentation requirement does not require separate corrected disclosures for each change. A creditor may provide corrected disclosures reflecting multiple changed circumstances, provided that the creditor's documentation demonstrates that each correction complies with the requirements of § 1026.19(e).

19(e)(3)(iv)(A) Changed circumstance affecting settlement charges.

1. *Requirement.* Except for the items identified in § 1026.19(e)(3) (iii), revised charges are compared to actual charges if the revision was caused by a changed circumstance. See also comment 19(e)(3)(iv)(A)–2 regarding the definition of a changed circumstance. The following examples illustrate the application of this provision:

i. Assume a creditor provides a $200 estimated appraisal fee pursuant to § 1026.19(e)(1)(i), which will be paid to an affiliated appraiser and therefore may not increase for purposes of determining good faith under § 1026.19(e)(3)(i), except as provided in § 1026.19(e)(3)(iv). The estimate was based on information provided by the consumer at application, which included information indicating that the subject property was a single-family dwelling. Upon arrival at the subject property, the appraiser discovers that the property is actually a single-family dwelling located on a farm. A different schedule of appraisal fees applies to residences located on farms. A changed circumstance has occurred (*i.e.,* information provided by the consumer is found to be inaccurate after the disclosures required under § 1026.19(e)(1)(i) were provided), which caused an increase in the cost of the appraisal. Therefore, if the creditor issues revised disclosures with the corrected appraisal fee, the actual appraisal fee of $400 paid at the real estate closing by the consumer will be compared to the revised appraisal fee of $400 to determine if the actual fee has increased above the estimated fee. However, if the creditor failed to provide revised disclosures, then the actual appraisal fee of $400 must be compared to the originally disclosed estimated appraisal fee of $200.

ii. Assume a creditor provides a $400 estimate of title fees, which are included in the category of fees which may not increase by more than ten percent for the purposes of determining good faith under § 1026.19(e)(3)(ii), except as provided in § 1026.19(e)(3)(iv). An unreleased lien is discovered and the title company must perform additional work to release the lien. However, the additional costs amount to only a five percent increase over the sum of all fees included in the category of fees which may not increase by more than ten percent. A changed circumstance has occurred (*i.e.,* new information), but costs have not increased by more than ten percent. Therefore, if the creditor issues revised disclosures, when the disclosures required by § 1026.19(f)(1)(i) are delivered, the actual title fees of $500 may not be compared to the revised title fees of $500; they must be compared to the originally estimated title fees of $400.

2. *Changed circumstance.* A changed circumstance may be an extraordinary event beyond the control of any interested party. For example, a war or a natural disaster would be an extraordinary event beyond the control of an interested party. A changed circumstance may also be an unexpected event specific to the consumer or the transaction. For example, if the creditor provided an estimate of title insurance on the disclosures required under § 1026.19(e)(1)(i), but the title insurer goes out of business during underwriting, then this unexpected event specific to the transaction is a changed circumstance. A changed circumstance may also be information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under § 1026.19(e)(1)(i) and that was inaccurate or changed after the disclosures were provided. For example, if the creditor relied on the consumer's income when providing the disclosures required under § 1026.19(e)(1)(i), and the consumer represented to the creditor that the consumer had an annual income of $90,000, but underwriting determines that the consumer's annual income is only $80,000, then this inaccuracy in information relied upon is a changed circumstance. Or, assume two co-applicants applied for a mortgage loan. One applicant's income was $30,000, while the other applicant's income was $50,000. If the creditor relied on the combined income of $80,000 when providing the disclosures required under § 1026.19(e)(1)(i), but the applicant earning $30,000 becomes unemployed during underwriting, thereby reducing the combined income to $50,000, then this change in information relied upon is a changed circumstance. A changed circumstance may also be the discovery of new information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures. For example, if the creditor relied upon the value of the property in providing the disclosures required under § 1026.19(e)(1)(i), but during underwriting a neighbor of the seller, upon learning of the impending sale of the property, files a claim contesting the boundary of the property to be sold, then this new information specific to

the transaction is a changed circumstance.

3. *Six pieces of information presumed collected, but not required.* Section 1026.19(e)(1)(iii) requires creditors to deliver the disclosures not later than the third business day after the creditor receives the consumer's application, which § 1026.2(a)(3)(ii) defines as six pieces of information. 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. However, 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. For example, if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a changed circumstance pursuant to § 1026.19(e)(3)(iv)(A) or (B).

19(e)(3)(iv)(B) Changed circumstance affecting eligibility.

1. *Requirement.* If changed circumstances cause a change in the consumer's eligibility for specific loan terms disclosed pursuant to § 1026.19(e)(1)(i) and revised disclosures are provided reflecting such change, the final amounts paid by the consumer may be compared to the revised estimated disclosures to determine if the actual fee has increased above the estimated fee. For example, assume that, prior to providing the disclosures required by § 1026.19(e)(1)(i), the creditor believed that the consumer was eligible for a loan program that did not require an appraisal. The creditor then provides the estimated disclosures required by § 1026.19(e)(1)(i), which do not include an estimated charge for an appraisal. During underwriting it is discovered that the consumer was delinquent on mortgage loan payments in the past, making the consumer ineligible for the loan program originally identified on the estimated disclosures, but the consumer remains eligible for a different program that requires an appraisal. If the creditor provides revised disclosures reflecting the new program and including the appraisal fee, then the actual appraisal fee will be compared to the revised appraisal fee to determine if the actual fee has increased above the estimated fee. However, if the revised disclosures also include increased estimates for title fees, the actual title fees must be compared to the original estimates because the increased title fees do not stem from the change in eligibility. See also § 1026.19(e)(3)(iv)(A) and comment 19(e)(3)(iv)(A)–2 regarding the definition of changed circumstances.

19(e)(3)(iv)(C) Revisions requested by the consumer.

1. *Requirement.* If the consumer requests revisions to the transaction that affect items disclosed pursuant to § 1026.19(e)(1)(i), and the creditor provides revised disclosures reflecting the consumer's requested changes, the final disclosures are compared to the revised disclosures to determine whether the actual fee has increased above the estimated fee. For example, assume that the consumer decides to grant a power of attorney authorizing a family member to consummate the transaction on the consumer's behalf after the disclosures required under § 1026.19(e)(1)(i) are provided. If the creditor provides revised disclosures reflecting the fee to record the power of attorney, then the actual charges will be compared to the revised charges to determine if the fees have increased.

19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements.* If the interest rate is not set when the disclosures required by § 1026.19(e)(1)(i) are delivered, a valid reason for revision exists when the interest rate is subsequently set, at which point § 1026.19(e)(3)(iv)(D) requires the creditor to issue a revised version of the disclosures required by § 1026.19(e)(1)(i) reflecting the revised interest rate, bona fide discount points, and lender credits. The following examples illustrate this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the disclosures required by § 1026.19(e)(1)(i) are originally provided, then the actual bona fide discount points and lender credits are compared to the estimated bona fide discount points and lender credits included in the disclosures originally provided pursuant to § 1026.19(e)(1)(i) for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required by § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide revised disclosures reflecting any revised bona fide discount points and lender credits, in which case the actual bona fide discount points and lender credits are compared to the revised bona fide discount points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).

ii. Assume a creditor does not offer rate lock agreements, but instead sets the interest rate on all mortgage loan transactions according to the interest rate in effect seven days prior to consummation. Section 1026.19(e)(3)(iv)(D) requires the creditor to issue a revised version of the disclosures required by § 1026.19(e)(1)(i) reflecting the set interest rate, bona fide discount points, and lender credits. The actual bona fide discount points and lender credits are compared to the revised bona fide discount points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).

19(e)(3)(iv)(E) Expiration.

1. *Requirements.* Section 1026.19(e)(3)(i) provides the general rule that the actual fees charged cannot exceed the fees disclosed pursuant to § 1026.19(e)(1)(i). An exception to that rule applies if the creditor provides revised versions of the disclosures required by § 1026.19(e)(1)(i) because the consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures were originally provided. However, § 1026.19(e)(3)(iv)(E) requires no justification for the change other than the lapse of ten business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided pursuant to § 1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a $700 underwriting fee. In this example § 1026.19(e) and § 1026.25 require the creditor to document that a new disclosure was provided pursuant to § 1026.19(e)(3)(iv)(E), but do not require the creditor to document a reason for the increase in the underwriting fee.

19(e)(3)(iv)(F) Delayed settlement date on a construction loan.

1. *Requirements.* A loan for the purchase of a home either to be constructed or under construction is considered a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). For example, a loan to purchase and build a home that has yet to be constructed, or a loan to purchase a home on which construction is currently underway, is a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). However, if a use and occupancy permit has been issued for the home prior to the issuance of the Loan Estimate, then the home is not considered to be under construction and the transaction would not be a construction loan to build a

home for the purposes of § 1026.19(e)(3)(iv)(F).

19(e)(4) Provision of revised disclosures.

1. *Three-day requirement.* Section 1026.19(e)(4) provides that the creditor must deliver revised disclosures within three business days of receiving information sufficient to establish that a reason for revision, as specified under § 1026.19(e)(3)(iv)(A) through (F), has occurred. The following examples illustrate these requirements:

i. Assume a creditor requires a pest inspection. The unaffiliated pest inspection company informs the creditor on Monday that the subject property contains evidence of termite damage, requiring a further inspection, the cost of which will cause an increase in estimated settlement charges subject to § 1026.19(e)(3)(ii) by more than ten percent. The creditor must deliver revised disclosures by Thursday to comply with § 1026.19(e)(4)(i).

ii. Assume a creditor receives information on Monday that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the title fees will increase by an amount totaling six percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). The creditor had received information three weeks before that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the appraisal fees increased by an amount totaling five percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply with § 1026.19(e)(4)(i).

iii. Assume a creditor requires an appraisal. The creditor receives the appraisal report, which indicates that the value of the home is significantly lower than expected. However, the creditor has reason to doubt the validity of the appraisal report. A reason for revision has not been established because the creditor reasonably believes that the appraisal report is incorrect. The creditor then chooses to send a different appraiser for a second opinion, but the second appraiser returns a similar report. At this point, the creditor has received information sufficient to establish that a reason for revision has, in fact, occurred, and must provide corrected disclosures within three business days of receiving the second appraisal report. In this example, in order to comply with § 1026.19(e)(3)(iv) and § 1026.25, the creditor must maintain records documenting the creditor's doubts regarding the validity of the appraisal to demonstrate that the reason for revision did not occur upon receipt of the first appraisal report.

2. *Revised disclosures may not be delivered at the same time as the final disclosures.* Creditors 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). For example, if the creditor is scheduled to meet with the consumer and provide the disclosures required by § 1026.19(f)(1)(i) on Wednesday, and the APR becomes inaccurate on Tuesday, the creditor would comply with the requirements of § 1026.19(e)(4) by providing the disclosures required by § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor would not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required by § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provided the disclosures required by § 1026.19(f)(1)(i) on Wednesday. Or, if the creditor is scheduled to email the disclosures required by § 1026.19(f)(1)(i) to the consumer on Wednesday, and the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) on Tuesday, the creditor would comply with the requirements § 1026.19(e)(4) by providing the disclosures required by § 1026.19(f)(1)(i) reflecting the consumer requested changes on Wednesday. However, the creditor would not comply if it provided both the disclosures required by § 1026.19(e)(1)(i) reflecting consumer requested changes and the disclosures required by § 1026.19(f)(1)(i) on Wednesday.

Alternative 1—Paragraph (f)(1)

19(f) Mortgage loans secured by real property—Final disclosures.

19(f)(1) Provision.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. 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 new 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). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer requests a change to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the revised disclosures are also provided no later than three business days before consummation.

19(f)(1)(ii) Timing.

1. *Timing.* Except as provided in § 1026.19(f)(1)(ii)(B) or (f)(2), the disclosures required by § 1026.19(f)(1)(i) must be received by the consumer no later than three business days before consummation. For example, if consummation is scheduled for Thursday, the creditor satisfies this requirement by hand delivering the disclosures on Monday, assuming each weekday is a business day. For purposes of § 1026.19(f)(1)(ii), the term ''business day'' means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)–2. *See* comment 2(a)(6)–1.

2. *Receipt of disclosures three business days before consummation.* Section 1026.19(f)(1)(ii) provides that the consumer must receive the disclosures no later than three business days before consummation. To comply with this requirement, the creditor must arrange for delivery accordingly. For example, if the consummation is scheduled for Thursday, the creditor satisfies this requirement by delivering the disclosures on Monday by way of electronic mail, provided the requirements of § 1026.17(a)(1) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day. However, a creditor does not satisfy the requirements of § 1026.19(f)(1)(ii) in this example if the creditor places the disclosures in the mail on Monday. A creditor would satisfy the requirements of § 1026.19(f)(1)(ii) in this example 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 as a business day, pursuant to § 1026.2(a)(6).

3. *Timeshares.* For loans secured by timeshares, as defined under 11 U.S.C.

101(53D), § 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. For example, if a consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, the creditor may provide the consumer with the disclosures required by § 1026.19(e)(1)(i) on the same day, pursuant to § 1026.19(e)(1)(iii). If consummation of this transaction is scheduled for Friday, June 5, 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. If, however, consummation is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, the day of consummation. If the consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, and wishes to consummate the transaction on that same day, then the creditor complies with § 1026.19(e)(4)(ii) by providing the disclosures required by § 1026.19(f)(1)(i) instead of the disclosures required by § 1026.19(e)(1)(i) on Monday, June 1, and the creditor also complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1.

19(f)(1)(iii) Delivery.

1. *Mail delivery.* Section 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 presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. This is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday, thereby rebutting the presumption that the disclosures were received on Thursday, three business days after the disclosures were sent.

2. *Electronic delivery.* The presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. For example, 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 presumed to have received the disclosure on Thursday, three business days later. However, the creditor may rebut the presumption by providing evidence that the consumer received the emailed disclosures earlier. Creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). For example, if a creditor delivers the disclosures required by § 1026.19(f)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.17(a)(1), and the creditor does not comply with § 1026.19(f)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(f)(1)(ii).

19(f)(1)(iv) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* 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). The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. 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. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

Alternative 2—Paragraph (f)(1)

19(f) Mortgage loans secured by real property—Final disclosures.

19(f)(1) Provision.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. 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 new 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). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer requests a change to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the revised disclosures are also provided no later than three business days before consummation.

19(f)(1)(ii) Timing.

1. *Timing.* Except as provided in § 1026.19(f)(1)(ii)(B) or (f)(2), the disclosures required by § 1026.19(f)(1)(i) must be received by the consumer no later than three business days before consummation. For example, if consummation is scheduled for Thursday, the creditor satisfies this requirement by hand delivering the disclosures on Monday, assuming each weekday is a business day. For purposes of § 1026.19(f)(1)(ii), the term ''business day'' means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)–2. *See* comment 2(a)(6)–1.

2. *Receipt of disclosures three business days before consummation.* Section 1026.19(f)(1)(ii) provides that the consumer must receive the disclosures no later than three business days before consummation. To comply with this requirement, the creditor must arrange for delivery accordingly. For example, if the consummation is scheduled for Thursday, the creditor satisfies this requirement by delivering the disclosures on Monday by way of electronic mail, provided the requirements of § 1026.17(a)(1) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day. However, a creditor does not satisfy the requirements of § 1026.19(f)(1)(ii) in this example if the creditor places the disclosures in the mail on Monday. A creditor would satisfy the requirements of § 1026.19(f)(1)(ii) in this example 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 as a business day, pursuant to § 1026.2(a)(6).

3. *Timeshares.* For loans secured by timeshares, as defined under 11 U.S.C. 101(53D), § 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. For example, if a consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, the creditor may provide the consumer with the disclosures required by § 1026.19(e)(1)(i) on the same day, pursuant to § 1026.19(e)(1)(iii). If consummation of this transaction is scheduled for Friday, June 5, 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. If, however, consummation is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, the day of consummation. If the consumer provides the creditor with an application, as defined by § 1026.2(a)(3), for a mortgage loan secured by a timeshare on Monday, June 1, and wishes to consummate the transaction on that same day, then the creditor complies with § 1026.19(e)(4)(ii) by providing the disclosures required by § 1026.19(f)(1)(i) instead of the disclosures required by § 1026.19(e)(1)(i) on Monday, June 1, and the creditor also complies with § 1026.19(f)(1)(ii)(B) by providing the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1.

19(f)(1)(iii) Delivery.

1. *Mail delivery.* Section 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 presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. This is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday, thereby rebutting the presumption that the disclosures were received on Thursday, three business days after the disclosures were sent.

2. *Electronic delivery.* The presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. For example, 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 presumed to have received the disclosure on Thursday, three business days later. However, the creditor may rebut the presumption by providing evidence that the consumer received the emailed disclosures earlier. Creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). For example, if a creditor delivers the disclosures required by § 1026.19(f)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.17(a)(1), and the creditor does not comply with § 1026.19(f)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(f)(1)(ii).

19(f)(1)(iv) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* 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). The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. 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. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

19(f)(1)(v) Settlement agent

1. *Requirements.* 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 becomes 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 such a reading would create responsibility for settlement agent under § 1026.19(e). For example, comment 19(f)(1)(ii)–3 states that, if a consumer provides the creditor with an application for a mortgage loan secured by a timeshare on Monday, June 1, the creditor may provide the consumer with the disclosures required by § 1026.19(e)(1)(i) on the same day, pursuant to § 1026.19(e)(1)(iii). ''Settlement agent'' could not be read in place of ''creditor'' in comment 19(f)(1)(ii)–3 because the settlement agents are not responsible for the disclosures required by § 1026.19(e)(1)(i). To ensure timely and accurate compliance with the requirements of this section, the creditor and settlement agent need to effectively communicate.

2. *Settlement agent responsibilities.* If a settlement agent issues any disclosure under § 1026.19(f), the settlement agent must comply with the requirements of § 1026.19(f). For example, the settlement agent must ensure that the consumer received the disclosures required under § 1026.19(f)(1)(i) no later than three business days before consummation in accordance with § 1026.19(f)(1)(ii). The settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). For example, both the creditor and the settlement agent comply with the requirements of § 1026.19(f)(1)(v) if the settlement agent agrees to complete only the portion of the disclosures required by § 1026.19(f)(1)(i) related to closing costs for taxes, title fees, and insurance premiums, the creditor agrees to complete the remainder of the disclosures required by § 1026.19(f)(1)(i), and either the settlement agent or the creditor provides the consumer with 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.

3. *Creditor responsibilities.* 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. For example, 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, in accordance with § 1026.19(f)(1)(ii). The creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures. For example, 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 creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. 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).

4. *Shared responsibilities permitted.* The settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). For example, the creditor complies with the requirements of § 1026.19(f)(1)(i) and the settlement agent complies with the requirements of § 1026.19(f)(1)(v) if the settlement agent agrees to complete only the portion of the disclosures required by § 1026.19(f)(1)(i) related to closing costs for taxes, title fees, and insurance premiums, the creditor agrees to complete the remainder of the disclosures required by § 1026.19(f)(1)(i), and either the settlement agent or the creditor provides the consumer with 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.

19(f)(2) Subsequent changes.

19(f)(2)(i) Changes due to consumer and seller negotiations.

1. *Requirements.* Section 1026.19(f)(2)(i) provides that the creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) if the revisions reflect changes to the transaction due to negotiations between the seller and the consumer, and such changes occur after the creditor provides the consumer with the disclosures required by § 1026.19(f)(1)(i). For example:

i . Assume consummation is scheduled for Thursday, the consumer received the disclosures required under § 1026.19(f)(1)(i) on Monday, and a walk-through inspection occurs on Wednesday morning. During the walk-through the consumer discovers damage to the dishwasher. The seller agrees to credit the consumer $500 towards a new dishwasher. The creditor complies with the requirements of § 1026.19(f) if the creditor provides a revised disclosure at or before consummation on Thursday.

ii. Assume consummation is scheduled for Friday and on Monday morning the creditor sends the disclosures via overnight delivery to the consumer, ensuring that the consumer receives the disclosures on Tuesday. On Monday night, the seller agrees to sell certain household furnishings to the consumer for an additional $1,000, to be paid at the real estate closing, and the consumer immediately informs the creditor of the change. The creditor may deliver revised disclosures at or before consummation. The creditor does not violate § 1026.19(f) because the change to the transaction resulting from negotiations between the seller and consumer occurred after the creditor provided the final disclosures, regardless of the fact that the change occurred before the consumer had received the final disclosures.

19(f)(2)(ii) Changes to the amount actually paid by the consumer.

1. *Requirements.* Section 1026.19(f)(2)(ii) states that the creditor may provide revised disclosures without complying with 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 § 1026.19(f)(1)(i) by more than $100, provided that the creditor delivers revised disclosures at or before consummation. For example, assume the disclosures provided pursuant to § 1026.19(f)(1)(i) reflect $18,700 as the total amount the consumer must pay at the real estate closing. If the disclosures reflect a homeowner's insurance premium of $800, but the premium is actually $850, the $50 understatement is not a violation of § 1026.19(f)(1)(i). In such case, the creditor complies with § 1026.19(f)(1)(i) by providing revised disclosures to the consumer at or before consummation, pursuant to § 1026.19(f)(2)(ii), reflecting the revised $850 homeowner's insurance premium and the revised $18,750 as the total amount the consumer must pay at the real estate closing. *See* also comment 38(i)(9)(ii)–1.

2. *Other adjustments permitted.* Revised disclosures provided at consummation may reflect adjustments pursuant to both § 1026.19(f)(2)(i) and (f)(2)(ii). Thus, although § 1026.19(f)(2)(ii) limits the difference between the amount disclosed pursuant to § 1026.19(f)(1)(i) and the amount actually paid by the consumer to $100, the amount actually paid by the consumer may vary by more than $100 to the extent permitted by § 1026.19(f)(2)(i). For example, if the disclosures reflect a homeowner's insurance premium of $800, but the premium is actually $850, the $50 understatement is not a violation of § 1026.19(f)(1)(i). If, in addition to this understatement, the total amount due from the buyer increases by $500 as a result of consumer and seller negotiations, the creditor complies with § 1026.19(f)(1)(i) by providing revised disclosures reflecting the $550 increase to the consumer at or before closing, pursuant to § 1026.19(f)(2)(ii). However, to comply with § 1026.25, the creditor must maintain documentation demonstrating that $500 of the increase was due to negotiations between the consumer and the seller under § 1026.19(f)(2)(i), and that the remainder of the increase complied with § 1026.19(f)(2)(ii).

19(f)(2)(iii) Changes due to events occurring after consummation.

1. *Requirements.* Section 1026.19(f)(2)(iii) requires the creditor to deliver revised disclosures within three business days of an event that occurs after consummation that causes the disclosures to become inaccurate, provided such inaccuracy results solely from payments to a government entity in connection with the transaction. For example:

i. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the fees charged by the recorder's office differ from those disclosed pursuant to § 1026.19(f)(1)(i), the creditor complies with § 1026.19(f)(1)(i) by revising the disclosures accordingly and delivering or placing them in the mail no later than Friday, three business days after Tuesday. However, if the fees charged by the recorder's office differ from those disclosed pursuant to § 1026.19(f)(1)(i), but the security instrument is not recorded until the 28th day after consummation, the creditor does not comply with § 1026.19(f)(1)(i) by placing the revised disclosures in the mail on that day, unless the creditor otherwise ensures that the consumer receives the revised disclosures by no later than 30 days after consummation, pursuant to § 1026.19(f)(2)(iii).

ii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(1)(i), then the creditor complies with § 1026.19(f)(1)(i) by revising the disclosures accordingly and delivering or placing them in the mail no later than Friday, three business days after Tuesday, and the consumer receives them no later than 30 days after consummation, pursuant to § 1026.19(f)(2)(iii).

iii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process it is discovered that the property is subject to an unpaid $500

nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i). The creditor complies with § 1026.19(f)(1)(i) by revising the disclosures accordingly and delivering or placing them in the mail no later than Friday, three business days after Tuesday, and the consumer receives them no later than 30 days after consummation, pursuant to § 1026.19(f)(2)(iii).

iv. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation the municipality in which the property is located raises property taxes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with a revised version of the disclosure required pursuant to § 1026.19(f)(1)(i), because the increase in property tax rates is not in connection with the consumer's transaction.

19(f)(2)(iv) Changes due to clerical errors.

1. *Requirements.* Section 1026.19(f)(2)(iv) requires the creditor to deliver revised disclosures to the consumer if the disclosures provided pursuant to § 1026.19(f)(1)(i) contain non-numeric clerical errors. An error is considered clerical if it does not affect a numerical disclosure and does not affect requirements imposed by § 1026.19(e) or (f). For example, if the disclosure identifies the incorrect settlement service provider as the recipient of a payment, then § 1026.19(f)(2)(iv) requires the creditor to provide revised disclosures reflecting the corrected non-numeric disclosure as soon as reasonably practicable, but no later than 30 days after consummation.

19(f)(2)(v) Refunds related to the good faith analysis.

1. *Requirements.* Section 1026.19(f)(2)(v) provides that, if amounts paid at closing 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 refunds the excess to the consumer as soon as reasonably practicable and no later than 30 days after consummation, and the creditor does not violate § 1026.19(f)(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. For example, assume that at closing the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceeded their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $10, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(i). If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then there would be a $90 excess amount above the limitations prescribed by § 1026.19(e)(3)(ii). Consequently, to comply with § 1026.19(f)(1)(i), the creditor must provide revised disclosures to the consumer reflecting the $180 refund of the excess amount collected. See comment 38(h)(3)–2 for additional guidance on disclosing refunds such as these.

19(f)(3) Charges disclosed.

19(f)(3)(i) Actual charge.

1. *Requirement.* Section 1026.19(f)(3)(i) provides the general rule that the amount imposed on the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service. 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.

19(f)(3)(ii) Average charge.

1. *Requirements.* 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. *See* comment 19(f)(3)(i)–1. 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. An average-charge program may not be used in a way that inflates the cost for settlement services overall.

2. *Defining the class of transactions.* Section 1026.19(f)(3)(ii)(B) requires a creditor to use an appropriate period of time, appropriate geographic area, and appropriate type of loan to define a particular class of transaction. For purposes of § 1026.19(f)(3)(ii)(B), a period of time is appropriate if the sample size is sufficient to obtain a representative sample, provided that the period of time is not less than 30 days and not more than six months. For purposes of § 1026.19(f)(3)(ii)(B), a geographic area and loan type are appropriate if the sample size is sufficient to obtain a representative sample, provided that the area and loan type are not defined in a way that pools costs between dissimilar populations. For example:

i. Assume a creditor defines a geographic area that contains two subdivisions, one with a median appraisal cost of $200, and the other with a median appraisal cost of $1,000. This geographic area would not satisfy the requirements of § 1026.19(f)(3)(ii) because the cost characteristics of the two populations are dissimilar. However, a geographic area would be appropriate if both subdivisions had a relatively normal distribution of appraisal costs, even if the distribution ranges from below $200 to above $1,000.

ii. Assume a creditor defines a type of loan that includes two distinct rate products. The median recording fees for one product are $80, while the median recording fees for the other product are $130. This definition of loan type would not satisfy the requirements of § 1026.19(f)(3)(ii) because the cost characteristics of the two products are dissimilar. However, a type of loan would be appropriate if both products had a relatively normal distribution of recording fees, even if the distribution ranges from below $80 to above $130.

3. *Uniform use.* If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed-rate loans originated between January 1 and April 30 secured by real property located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed-rate loans originated between May 1 and August 30 secured by real property located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly,

although the creditor defined the class broadly to include all fixed-rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed-rate loan program the consumer applied for does not require an appraisal.

4. *Average amount paid.* The average charge must correspond to the average amount paid by or imposed on consumers and sellers during the prior defined time period. For example, assume a creditor calculates an average tax certification fee based on four-month periods starting January 1 of each year. The tax certification fees charged to a consumer on May 20 may not exceed the average tax certification fee paid from January 1 through April 30. A creditor may delay the period by a reasonable amount of time if such delay is needed to perform the necessary analysis and update the affected systems, provided that each subsequent period is scheduled accordingly. For example, a creditor may define a four-month period from January 1 to April 30 and begin using the average charge from that period on May 15, provided the average charge is used until September 15, at which time the average charge for the period from May 1 to August 31 becomes effective.

5. *Adjustments based on retrospective analysis required.* Creditors using average charges must ensure that the total amount paid by or imposed on consumers for a service does not exceed the total amount paid to the providers of that service for the particular class of transactions. A creditor may find that, even though it developed an average-cost pricing program in accordance with the requirements of § 1026.19(f)(3)(ii), over time it has collected more from consumers than it has paid to settlement service providers. For example, assume a creditor defines a class of transactions and uses that class to develop an average charge of $135 for pest inspections. The creditor then charges $135 per transaction for 100 transactions from January 1 through April 30, but the actual average cost to the creditor of pest inspections during this period is $115. The creditor then decreases the average charge for the May to August period to account for the lower average cost during the January to April period. At this point, the creditor has collected $2,000 more than it has paid to settlement service providers for pest inspections. The creditor then charges $115 per transaction for 70 transactions from May 1 to August 30, but the actual average cost to the creditor of pest inspections during this period is $125. Based on the average cost to the creditor from the May to August period, the average charge to the consumer for the September to December period should be $125. However, while the creditor spent $700 more than it collected during the May to August period, it collected $1,300 more than it spent from January to August. In cases such as these, the creditor remains responsible for ensuring that the amount collected from consumers does not exceed the total amounts paid for the corresponding settlement services over time. The creditor may develop a variety of methods that achieve this outcome. For example, the creditor may choose to refund the proportional overage paid to the affected consumers. Or the creditor may choose to factor in the excess amount collected to decrease the average charge for an upcoming period. Although any method may comply with this requirement, a creditor is deemed to have complied if it defines a six-month time period and establishes a rolling monthly period of reevaluation. For example, assume a creditor defines a six-month time period from January 1 to June 30 and the creditor uses the average charge starting July 1. If, at the end of July, the creditor recalculates the average cost from February 1 to July 31, and then uses the recalculated average cost for transactions starting August 1, the creditor complies with the requirements of § 1026.19(f)(3)(ii), even if the creditor actually collected more from consumers than was paid to providers over time.

6. *Adjustments based on prospective analysis permitted, but not required.* A creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so. For example, assume a creditor calculates average charges based on two time periods: winter (October 1 to March 31), and summer (April 1 to September 30). If the creditor can demonstrate that the average cost of a particular settlement service is always at least 15 percent more expensive during the winter period than the summer period, the creditor may increase the average charge for the next winter period by 15 percent over the average cost for the current summer period, provided, however, that the creditor performs retrospective periodic adjustments, as explained in comment 19(f)(3)(ii)–5.

7. *Charges that vary with loan amount or property value.* An average charge may not be used for any charge that varies according to the loan amount or property value. For example, an average charge may not be used for a transfer tax if the transfer tax is calculated as a percentage of the loan amount or property value. Average charges also may not be used for any insurance premium. For example, average charges may not be used for title insurance or for either the upfront premium or initial escrow deposit for hazard insurance.

8. *Prohibited by law.* An average charge may not be used where prohibited by any applicable State or local law. For example, a creditor may not impose an average charge for an appraisal if applicable law prohibits creditors from collecting any amount in excess of the actual cost of the appraisal.

9. *Documentation required.* 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. The documentation must support the components and methods of calculation. For example, if a creditor calculates an average charge for a particular county recording fee by simply averaging all of the relevant fees paid in the prior month, the creditor need only retain the receipts for the individual recording fees, a ledger demonstrating that the total amount received did not exceed the total amount paid over time, and a document detailing the calculation. However, if a creditor develops complex algorithms for determining averages, not only must the creditor maintain the underlying receipts and ledgers, but the creditor must maintain documentation sufficiently detailed to allow an examiner to verify the accuracy of the calculations.

19(f)(4) Transactions involving a seller.

19(f)(4)(ii) Timing.

1. *Requirement.* Section 1026.19(f)(4)(ii) provides that the person conducting the closing shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation. 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 closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, the person conducting the closing need only redisclose if an item related to the seller's transaction becomes inaccurate and such inaccuracy results solely from payments to a government entity. For example, assume a transaction where the seller pays the transfer tax, the consummation occurs on Monday, and the security instrument is recorded on

Tuesday, the day after consummation. If the transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(4)(i), the person conducting the settlement complies with § 1026.19(f)(4)(ii) by revising the disclosures accordingly and providing them to the seller no later than 30 days after consummation.

19(g) Special information booklet at time of application.

19(g)(1) Creditor to provide special information booklet.

1. *Revision of booklet.* 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 Bureau may also choose to permit the forms or booklets of other Federal agencies. In such an event, the availability of the booklet or alternate materials for these transactions will be set forth in a notice in the **Federal Register**. The current version of the booklet can be accessed on the Bureau's Web site, *www.consumerfinance.gov/learnmore.*

(2.) *Multiple applicants.* 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.

19(g)(2) Permissible changes.

1. *Reproduction.* The special information booklet may be reproduced in any form, provided that no changes are made, except as otherwise provided under § 1026.19(g). Provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). 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.

2. *Other permissible changes.* The special information booklet may be translated into languages other than English. Changes to the booklet, other those specified in § 1026.19(g)(2)(i) through (iv), do not comply with § 1026.19(g).◄

Section 1026.22—Determination of Annual Percentage Rate

22(a) Accuracy of annual percentage rate.

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22(a)(4) Mortgage loans.

1. *Example.* If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under § 1026.18(d)(1) ►or 1026.38(o)(2), as applicable◄, and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under § 1026.22(a)(2). Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

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Section 1026.24—Advertising

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24(d) Advertisement of terms that require additional disclosures.

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24(d)(2) Additional terms.

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2. *Disclosure of repayment terms.* The phrase ''terms of repayment'' generally has the same meaning as the ''payment schedule'' required to be disclosed under § 1026.18(g)►, the interest rate and payment summary table required to be disclosed pursuant to § 1026.18(s), or the projected payments table required to be disclosed pursuant to §§ 1026.37(c) and 1026.38(c), as applicable◄. Section 1026.24(d)(2)(ii) provides flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. Repayment terms, however, must reflect the consumer's repayment obligations over the full term of the loan, including any balloon payment, *see* comment 24(d)(2)–3, not just the repayment terms that will apply for a limited period of time. For example:

i. A creditor may use a unit-cost approach in making the required disclosure, such as ''48 monthly payments of $27.83 per $1,000 borrowed.''

ii. In an advertisement for credit secured by a dwelling, when any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the fact that payments do not include amounts for mortgage insurance premiums, and that the actual payment obligation will be higher.

iii. In an advertisement for credit secured by a dwelling, when one series of monthly payments will apply for a limited period of time followed by a series of higher monthly payments for the remaining term of the loan, the advertisement must state the number and time period of each series of payments, and the amounts of each of those payments. For this purpose, the creditor must assume that the consumer makes the lower series of payments for the maximum allowable period of time.

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Subpart D—Miscellaneous

Section 1026.25—Record Retention

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

25(c)(1) Records related to requirements for loans secured by real property.

1. *Evidence of required actions.* The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, 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 cost under § 1026.19(f)(3)(ii).

2. *Mortgage brokers.* See comment 19(e)(1)(ii)–2 regarding instances where § 1026.19(e) imposes § 1026.25(c) responsibilities on mortgage brokers.

25(c)(1)(iii) Electronic records. (1.) *Other recordkeeping formats may also be required.* The requirements of § 1026.25(c)(1)(iii) are in addition to any other recordkeeping formats that may be required by administrative agencies responsible for enforcing the regulation.◄

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Section 1026.28—Effect on State Laws

28(a) Inconsistent disclosure requirements.

1. *General.* There are three sets of preemption criteria: one applies to the general disclosure and advertising rules of the regulation, and two apply to the credit billing provisions. Section 1026.28 also provides for Bureau determinations of preemption. ►For purposes of determining 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 §§ 1026.19(e) and (f), 1026.37, and 1026.38 under § 1026.28, any reference to ''creditor'' in § 1026.28 or this commentary includes a creditor, a mortgage broker, or a closing agent, as applicable.◄

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Section 1026.29—State Exemptions

29(a) General rule.

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2. *Substantial similarity.* The ''substantially similar'' standard requires that State statutory or regulatory provisions and State interpretations of those provisions be generally the same as the Federal Act and Regulation Z. This includes the requirement that State provisions for reimbursement to consumers for overcharges be at least equivalent to those required in section 108 of the Act. A State will be eligible for an exemption even if its law covers classes of transactions not covered by the Federal law. For example, if a State's law covers agricultural credit, this will not prevent the Bureau from granting an exemption for consumer credit, even though agricultural credit is not covered by the Federal law. ►For transactions subject to § 1026.19(e) and (f), § 1026.29(a)(1) requires that the State statutory or regulatory provisions and State interpretations of those provisions require disclosures that are generally the same as the disclosures required by § 1026.19(e) and (f), with form and content as prescribed by §§ 1026.37 and 1026.38.◄

* * * * *

4. *Exemptions granted.* ►i.◄ The Bureau recognizes exemptions granted by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1982, the Board of Governors granted the following exemptions from portions of the revised Truth in Lending Act:

[i.] ►A.◄ *Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor or lessor.)

[ii.] ►B.◄ *Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

[iii.] ►C.◄ *Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

[iv.] ►D.◄ *Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal Act. (The exemption does not apply to sections 132 through 135 of the Federal Act, nor does it apply to transactions in which a Federally chartered institution is a creditor or lessor.)

[v.] ►E.◄ *Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

►ii. Although RESPA and its implementing Regulation X do not provide procedures for granting 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 the Real Estate Settlement Procedures Act (RESPA) (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). If such a transaction is subject to one of the State exemptions previously granted by the Board of Governors and noted in comment 29(a)–4.i above, however, 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) and the provisions of Regulation X (12 CFR part 1024) implementing those sections of RESPA.◄

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►*Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)*

1. *As applicable.* The disclosures required by § 1026.37 are to be made only as applicable, except as otherwise provided in § 1026.37(o). A disclosure that is not applicable to a particular transaction generally may be eliminated entirely. For example, in a transaction for which the creditor does not require homeowner's insurance, the disclosure required by § 1026.37(m)(3) need not be included. Alternatively, the creditor generally may include disclosures that are not applicable to the transaction and note that they are ''not applicable'' or ''N/A.'' As provided in § 1026.37(i) and (j), however, the adjustable payment and adjustable interest rate tables required by those paragraphs may be included only if those disclosures are applicable to the transaction and otherwise must be excluded.

2. *Format.* See § 1026.37(o) and its commentary for guidance on the proper format to be used in making the disclosures, as well as permissible modifications.

37(a) General information.

37(a)(3) Creditor.

1. *Multiple creditors.* For transactions with multiple creditors, see § 1026.17(d) and comment 17(d)–1 for further guidance. The creditor making the disclosures, however, must be identified as the creditor for purposes of § 1026.37(a)(3).

2. *Mortgage broker as loan originator.* In transactions involving a mortgage broker, the name of the creditor must be disclosed, if known, even if the mortgage broker provides the disclosures to the consumer.

37(a)(4) Date issued.

1. *Applicable date.* Section 1026.37(a)(4) requires disclosure of the date the creditor mails or delivers the Loan Estimate to the consumer. The creditor's method of delivery does not affect the date issued.

37(a)(5) Applicants.

1. *Multiple consumers.* If there is more than one consumer applying for the credit, § 1026.37(a)(5) requires disclosure of the name and mailing address of each consumer on the Loan Estimate. If the number of consumers applying for the credit does not fit in the space allocated on the Loan Estimate, an additional page with that information may be appended to the end of the form. For additional information on permissible changes, see § 1026.37(o) and its commentary.

37(a)(6) Property.

1. *Alternate property address.* Section 1026.37(a)(6) requires disclosure of the street address, if available, and the city, state, and zip code for the property that secures the credit. If there is no street address, § 1026.37(a)(6) requires disclosure of a legal description or other location information for the property; however, disclosure of a zip code is required in all instances.

37(a)(7) Sale price.

1. *Estimated property value.* In transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) at the time the disclosure is issued to the consumer. The creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is

issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value.

37(a)(8) Loan term.

1. *Adjustable loan term.* Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. If the term to maturity is adjustable, to comply with § 1026.37(a)(8), the possible range of the loan term, including the maximum number of years possible under the terms of the legal obligation, must be disclosed. For example, if the loan term depends on the value of interest rate adjustments during the term of the loan, to calculate the maximum loan term, the creditor should assume that the interest rate rises 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.

37(a)(9) Purpose.

1. *General.* Section 1026.37(a)(9) requires disclosure of the consumer's intended use of the credit extended. In ascertaining the consumer's intended use, § 1026.37(a)(9) requires the creditor to consider all relevant information known to the creditor at the time of the disclosure. To the extent the purpose is not known, the creditor may rely on the consumer's stated purpose. The following examples illustrate when each of the permissible purposes should be disclosed:

i. *Purchase.* The consumer intends to use the credit to purchase the property.

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. *Construction.* Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of construction (''construction-only'' loan), whether it is 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). In a construction-only loan, the borrower may be required to make interest-only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-to-permanent loans, see § 1026.17(c)(6)(ii) and comments 17(c)(6)–2 and –3.

iv. *Home equity loan.* The creditor is required to disclose that the credit is for a ''home equity loan'' if the creditor extends credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the property that secures the loan is a first or subordinate lien.

2. *Refinance coverage.* The disclosure requirements under § 1026.37(a)(9)(ii) apply to credit transactions that meet the definition of a refinancing under § 1026.20(a) but that are made by any creditor. This differs from § 1026.20(a), which applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt.

37(a)(10) Product.

1. *No features.* If the loan product disclosed pursuant to § 1026.37(a)(10) does not include any of the features described in § 1026.37(a)(10)(ii), only the product type and introductory and adjustment periods, if applicable, are disclosed. For example:

i. *Adjustable rate.* When disclosing an adjustable rate product, the disclosure of the loan product must be preceded by the length of the introductory period and the frequency of the adjustment periods thereafter. Thus, for example, if 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, the disclosure required by § 1026.37(10)(i) is ''5/3 Adjustable Rate.''

ii. *Step rate.* If the loan product is a step rate with an introductory interest rate that lasts for ten 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)(i) is ''10/1/3 Step Rate.''

iii. *Fixed rate.* If the loan product is not an adjustable rate or a step rate, as described in § 1026.37(a)(10)(i), even if an additional feature described in § 1026.37(a)(10)(ii) may change the consumer's periodic payment, the disclosure required by § 1026.37(a)(10)(i) is ''Fixed Rate.''

2. *Additional features.* When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) requires the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the adjustment periods, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:

i. *Negative amortization.* Some loan products, such as payment-option loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the negative amortization is permitted (*e.g.,* ''2 Year Negative Amortization''), followed by the loan product type. Thus, a fixed-rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as ''2 Year Negative Amortization, Fixed Rate.''

ii. *Interest only.* When disclosing an ''Interest Only'' feature, as that term is defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label ''Interest Only.'' Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as ''5 Year Interest Only, Fixed Rate.'' If the interest only feature fails to cover the total interest due then the disclosure must reference the negative amortization feature and not the interest-only feature (*i.e.,* ''5 Year Negative Amortization, Fixed Rate'').

iii. *Step payment.* When disclosing a step payment feature (which is sometimes also referred to as a graduated payment), the period of time over which the scheduled payments will increase must precede the label ''Step Payment'' (*e.g.,* ''5 Year Step Payment'') followed by the name of the loan product. Thus, a fixed-rate mortgage subject to a 5-year step-payment plan is disclosed as a ''5-Year Step Payment, Fixed Rate.''

iv. *Balloon payment.* If a loan product includes a ''balloon payment,'' as that

term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is an adjustable rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is ''Year 7 Balloon Payment, 3/1 Step Rate.''

v. *Seasonal payment.* If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label ''Seasonal Payment'' without any preceding number of years satisfies this requirement.

37(a)(11) Loan type.

1. *Other loan type.* If the transaction is a type other than a conventional, FHA, or VA loan, § 1026.37(a)(11) requires the creditor to provide a name or brief description of the loan type. For example, a loan that is guaranteed or funded by the Federal government under the Rural Housing Service (RHS) of the U.S. Department of Agriculture is required to be disclosed under the subcategory ''Other,'' because it is guaranteed or funded by a Federal agency, and therefore is not ''Conventional,'' but is neither a ''VA'' nor an ''FHA'' loan. Section 1026.37(a)(11)(iv) requires a brief description of the loan type (*e.g.,* ''RHS''). A loan that is insured or guaranteed by a State agency must also be disclosed as ''Other.''

37(a)(12) Loan identification number (Loan ID #).

1. *Unique identifier.* The unique loan identification number is determined by the lender. Because the number must be unique under § 1026.37(a)(12), different, but related, loan transactions with a single creditor may not share the same loan identification number.

37(a)(13) Rate lock.

1. *Interest rate.* For purposes of § 1026.37(a)(13), the interest rate is set for a specific period of time if the rate will not vary during that period, other than under circumstances that are described in any rate-lock agreement between the creditor and consumer.

2. *Expiration date.* Whether or not the interest rate is set for a specific period of time, § 1026.37(a)(13) requires the creditor to provide the date and time the terms and costs disclosed in the Loan Estimate expire if the transaction is not yet consummated, or the terms and costs are not otherwise accepted or extended.

3. *Time zone.* The disclosures required by § 1026.37(13) requires the applicable time zone for all times provided, as determined by the creditor. For example, if the creditor is located in New York and determines that the Loan Estimate will expire at 5:00 p.m. in the time zone applicable to its location, while standard time is in effect, the disclosure must include a reference to the Eastern time zone (*i.e.,* 5:00 p.m. EST).

37(b) Loan terms.

1. *Legal obligation.* The disclosures required by § 1026.37 must reflect good faith estimates of the credit terms to which the parties will be legally bound for the transaction. If certain terms of the transaction are known or reasonably should be known to the creditor, based on information such as the consumer's selection of a product type or other information in the consumer's application, § 1026.37 requires the creditor to disclose those credit terms. For example, if the consumer selects a product type with a prepayment penalty, the terms of the prepayment penalty known to the creditor at the time the disclosure is provided shall be set forth in the disclosure.

37(b)(2) Interest rate.

1. *Initial interest rate if adjustable.* The fully-indexed rate is defined in § 1026.37(b)(2) as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin ''at consummation,'' if the index value that will be in effect at consummation is unknown at the time the disclosure is provided pursuant to § 1026.19(e), such as for the disclosure delivered within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is provided. The index in effect at consummation (or the time the disclosure is provided pursuant to § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed.

37(b)(3) Principal and interest payment.

1. *Frequency of principal and interest payment.* Pursuant to § 1026.37(o)(5)(i), if the contract provides for a unit-period of a month, such as a monthly payment schedule, the payment disclosed under § 1026.37(b)(3) should be labeled ''Monthly Principal & Interest.'' If the contract requires bi-weekly payments of principal or interest, the payment should be labeled ''Bi-Weekly Principal & Interest.'' If a creditor voluntarily permits a payment schedule not provided for in the contract, such as an informal principal-reduction arrangement, the disclosure should reflect only the payment frequency provided for in the contract. *See* § 1026.17(c)(1).

2. *Initial periodic payment if adjustable.* Pursuant to § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment may vary based on an adjustment to an index, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). *See* comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

37(b)(4) Prepayment penalty.

1. *Transaction includes a prepayment penalty.* Section 1026.37(b)(4) requires disclosure of a statement of whether the transaction includes a prepayment penalty. If the transaction includes a prepayment penalty, § 1026.37(b)(7) sets forth the information that must be disclosed under § 1026.37(b)(4) (*i.e.,* the maximum amount of the prepayment penalty that may be imposed under the terms of the loan contract and the date when the penalty will no longer be imposed). For an example of such disclosure, see form H–24 in appendix H to this part. The disclosure under § 1026.37(b)(4) would apply 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. For example, if the monthly interest accrual amortization method described in comment 37(b)(4)–2.i is used such that interest is assessed on the balance for a full month even if the consumer makes a full prepayment before the end of the month, as discussed in comment 37(b)(4)–2.i, the transaction includes a prepayment penalty that must be disclosed pursuant to § 1026.37(b)(4).

2. *Examples of prepayment penalties.* For purposes of § 1026.37(b)(4), the following are examples of prepayment penalties:

i. 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. ''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. For example, ''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). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. 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.

iii A minimum finance charge in a simple interest transaction.

iv. 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). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

3. *Fees that are not prepayment penalties.* For purposes of § 1026.37(b)(4), fees which are not prepayment penalties include, for example:

i. 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.

ii. Loan guarantee fees.

4. *Rebate of finance charge.* For an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation, the disclosure under § 1026.37(b)(4) reflects whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. Finance charges that do not take into account each reduction in the principal balance of an obligation may include precomputed finance charges. If any portion of an unearned precomputed finance charge will not be provided as a rebate upon full prepayment, the disclosure required by § 1026.37(b)(4) will be an affirmative answer, indicate the maximum amount of such precomputed finance charge that may not be provided as a rebate to the consumer upon any prepayment, and when the period during which a full rebate would not be provided terminates, as required by § 1026.37(b)(7). If, instead, there will be a full rebate of the precomputed finance charge and no other prepayment penalty imposed on the consumer, to comply with the requirements of § 1026.37(b)(4) and (7), the creditor states a negative answer only. If the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosure about both the entitlement to any rebate of the finance charge upon prepayment and any other prepayment penalty are made as one disclosure under § 1026.37(b)(4), stating one affirmative or negative answer and an aggregated amount and time period for the information required by § 1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and the loan contract also provides for a prepayment penalty based on the amount prepaid, both disclosures are made under § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, to comply with § 1026.37(b)(4), the creditor states an affirmative answer and the information about the prepayment penalty, as required by § 1026.37(b)(7). For further guidance and examples of these types of charges, see comment 18(k)(2)–1. For analogous guidance, see comment 18(k)–2. For further guidance on prepaid finance charges generally, see comment 18(k)–3.

5. *Additional guidance.* For additional guidance generally on disclosures of prepayment penalties, see comment 18(k)–1.

37(b)(5) Balloon payment.

1. *Regular periodic payment.* The regular periodic payments used to determine whether a payment is a balloon payment under § 1026.37(b)(5) are the payments of principal and interest (or interest only, depending on the loan features) specified under the terms of the loan contract that are due from the consumer for two or more unit periods in succession. 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 have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract. If a specific payment is more than two times any one regular periodic payment during the loan term, then it is disclosed as a balloon payment under § 1026.37(b)(5) unless the specific payment itself is a regular periodic payment.

i. For example, assume that, under a 15-year step-rate mortgage, the loan contract provides for scheduled monthly payments of $300 each during the years one through three and scheduled monthly payments of $700 each during years four through 15. If an irregular payment of $1,000 is scheduled during the final month of year 15, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through three. This is the case even though the irregular payment is not more than two times the regular periodic payment of $700 per month during years four through fifteen. The $700 monthly payments during years four through fifteen are not balloon payments even though they are more than two times the regular periodic payments during years one through three, because they are regular periodic payments.

ii. If the loan has an adjustable rate under which the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation, then 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. For analogous guidance, see comments 17(c)(1)–8 and –10. For example, assume that, under a 30-year adjustable rate mortgage, (1) the loan contract requires monthly payments of $300 during years one through five, (2) the loan contract permits interest rate increases every three years starting in

the sixth year up to the fully-indexed rate, subject to caps on interest rate adjustments specified in the loan contract, (3) based on the application of the interest rate adjustment caps, the interest rate may increase to the fully-indexed rate starting in year nine, and (4) the monthly payment based on the fully-indexed rate is $700. The regular periodic payments during years one through five are $300 per month, because they are known and scheduled. The regular periodic payments during years six through eight are up to $700 per month, based on the fully-indexed rate but subject to the application of interest rate adjustment caps specified under the loan contract. The regular periodic payments during years nine through thirty are $700, based on the fully-indexed rate. Therefore, if an irregular payment of $1,000 is scheduled during the final month of year 30, that payment is disclosed as a balloon payment under § 1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through five. This is the case even though the irregular payment is not more than two times the regular periodic payment during years nine through thirty (*i.e.,* based on the fully-indexed rate). However, the regular periodic payments during years six through thirty themselves are not balloon payments, even though they may be more than two times the regular periodic payments during years one through five.

iii. 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 scheduled periodic payment specified under the terms of the loan contract, if any.

iv. The disclosure of balloon payments in the ''Projected Payments'' table under § 1026.37(c) is governed by that section and its commentary, rather than § 1026.37(b)(5), except that the determination, as a threshold matter, of whether a payment disclosed under § 1026.37(c) is a balloon payment is made in accordance with § 1026.37(b)(5) and its commentary.

2. *Single and double payment transactions.* The definition of a ''balloon payment'' under § 1026.37(b)(5) includes the payments under transactions that require only one or two payments during the loan term, even though a single payment transaction does not require regular periodic payments, and a transaction with only two scheduled payments during the loan term may not require regular periodic payments.

37(b)(7) Details about prepayment penalty and balloon payment.

Paragraph 37(b)(7)(i).

1. *Maximum prepayment penalty.* Section 1026.37(b)(7)(i) requires disclosure of the maximum amount of the prepayment penalty that may be imposed under the terms of the legal obligation. The creditor complies with § 1026.37(b)(7)(i) when it assumes that the consumer prepays at a time when the prepayment penalty may be charged and that the consumer makes all payments prior to the prepayment on a timely basis and in the amount required by the terms of the legal obligation. The creditor must determine the maximum of each amount used in calculating the prepayment penalty. For example, if a transaction is fully amortizing and the prepayment penalty is two percent of the loan balance at the time of prepayment, the prepayment penalty amount should be determined by using the highest loan balance possible during the period in which the penalty may be imposed. If the loan is negatively amortizing and the prepayment penalty equals three percent of the loan balance in the first year and two percent in the second year during the first two years after loan origination, the creditor must determine the highest loan balance in each year and apply the respective two percent or three percent rate to such balance to determine the maximum amount. If more than one type of prepayment penalty applies, the creditor must aggregate the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.

37(b)(8) Timing.

1. *Timing.* The timing of information required by § 1026.37(b)(8) starts with year number ''1,'' counting from the date that interest for the first scheduled periodic payment begins to accrue. For example, an interest rate that can first adjust at the beginning of the 13th month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in ''year 2.'' An interest rate that can first adjust at the beginning of the 61st month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in ''year 6.'' A monthly periodic principal and interest payment that begins to adjust at the 13th payment would be disclosed as beginning to adjust in ''year 2.''

37(c) Projected payments.

1. *Definitions.* For purposes of § 1026.37(c), the terms ''adjustable rate,'' ''fixed rate,'' ''negative amortization,'' and ''interest-only'' have the meanings in § 1026.37(a)(10).

37(c)(1) Periodic payment or range of payments.

Paragraph 37(c)(1)(i).

1. *Periodic payments.* 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.

Paragraph 37(c)(1)(i)(A).

1. *Periodic principal and interest payments.* For purposes of § 1026.37(c)(1)(i)(A), 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 are not changes to periodic principal and interest payments.

2. *Negative amortization.* In a loan that permits negative amortization, 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 disclosure 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 potential changes to the interest rate. The table required by § 1026.37(c) should also reflect any balloon payment that would result from making the minimum payment required under the terms of the legal obligation.

3. *Interest-only.* In a loan that permits payment of only interest for a specified period, 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.

Paragraph 37(c)(1)(i)(B).

1. *Balloon payment.* 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 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). 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 are calculated using the assumptions for minimum and maximum interest rates described in § 1026.37(c)(1)(iii) and its commentary, and should be disclosed as a range of payments.

Paragraph 37(c)(1)(i)(C).

1. *General.* ''Mortgage insurance'' means insurance against the nonpayment of, or default on, an individual mortgage. For purposes of § 1026.37(c), ''mortgage insurance coverage 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. The fees for such a guarantee are included in ''mortgage insurance premiums.''

2. *Calculation.* 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, assuming the fully-indexed rate applies at consummation, taking into account any introductory interest rates.

3. *Disclosure.* The table required by § 1026.37(c) should reflect the consumer's mortgage insurance premiums 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 is not, 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 require a separate disclosure of a periodic payment or range payments.

Paragraph 37(c)(1)(ii).

Paragraph 37(c)(1)(ii)(A).

1. *Balloon payments that are final payments.* Section 1026.37(c)(1)(ii)(A) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires 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, are disclosed pursuant to the general rule in § 1026.37(c)(1)(ii).

Paragraph 37(c)(1)(iii).

1. *Calculation of minimum and maximum payments.* A range of payments is disclosed under § 1026.37(c)(1)(iii) 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 § 1026.37(c)(1)(ii). For such transactions, § 1026.37(c)(1)(iii) requires 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 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. 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 possible interest rate for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly 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.

2. *Ranges of payments.* When a range of payments is required, § 1026.37(c)(1)(iii) requires the creditor to 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 amount required to be disclosed for mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) and the amount payable into an escrow account pursuant to § 1026.37(c)(2)(iii) shall not be disclosed as a range.

3. *Adjustable rate mortgages.* For an adjustable rate mortgage, the periodic principal and interest payment at each time the interest rate may change will depend on the rate that applies at the time of the adjustment, which is not known at the time the disclosure is provided. As a result, the creditor discloses the minimum and maximum periodic principal and interest payment that could apply during each period disclosed pursuant to § 1026.37(c)(1) after the first period.

37(c)(2) Itemization.

Paragraph 37(c)(2)(ii).

1. *Mortgage insurance.* 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. If the consumer is not required to purchase mortgage insurance, the creditor shall disclose the mortgage insurance premium as ''0''.

2. *Periodic payments.* The creditor discloses mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

Paragraph 37(c)(2)(iii).

1. *Escrow.* The 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)(A) through (E).

37(c)(3) Subheadings.

Paragraph 37(c)(3)(ii).

1. *Years.* Section 1026.37(c)(3)(ii) requires that each periodic payment or range of payments be disclosed under a subheading that states the number of years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years. For purposes of § 1026.37(c), ''year'' is defined as the twelve-month interval beginning on the due date of the first periodic payment and each anniversary thereafter. For example, for a loan with a 30-year term that does not require mortgage insurance and requires interest-only payments for the first 60 months of the loan, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, the creditor would label the first disclosure of periodic payments as ''Years 1–5'' and the second disclosure of periodic payments or range of payments as ''Years 6–30.'' However, if that loan requires interest-only payments for the first 54 months of the loan, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, the creditor would label the first disclosure of periodic payments as ''Years 1–4'' and the second disclosure of periodic

payments or range of payments as ''Years 5–30.'' Finally, if the loan that requires interest-only payments for the first 54 months also requires mortgage insurance that would automatically terminate under applicable law after the 100th month of the loan's term, the creditor would label the first disclosure of periodic 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 range of payments as ''Years 9–30.''

2. *Loans with variable terms.* If the loan term may increase based on an adjustment of the interest rate, the creditor must disclose the maximum loan term possible under the legal obligation. To calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. *See* comment 37(a)(8)–1.

37(c)(4) Taxes, insurance, and assessments.

Paragraph 37(c)(4)(ii).

1. *Mortgage-related insurance premiums.* Mortgage-related insurance premiums required by the creditor are those described § 1026.35(b)(3)(i) and its commentary, except that, for purposes of § 1026.37(c)(4)(ii), mortgage-related insurance premiums do not include mortgage insurance premiums disclosed pursuant to § 1026.37(c)(2)(ii). A creditor need not include premiums for mortgage-related insurance that are not required as part of the legal obligation or under applicable law, such as optional earthquake insurance or credit insurance, or fees for optional debt suspension and debt cancellation agreements.

2. *Special assessments.* Special assessments are imposed on the consumer at or before consummation, such as a one-time homeowners' association fee that will not be paid by the consumer in full at or before consummation.

37(f) Closing cost details; loan costs.

1. *General description.* The items disclosed under § 1026.37(f) include services that the creditor or mortgage broker require for consummation, such as underwriting, appraisal, and title services.

2. *Mortgage broker.* Official commentary under § 1026.19(e)(1)(ii) discusses the requirements and responsibilities of mortgage brokers that provide the disclosures required by § 1026.19(e), which include the disclosures set forth in § 1026.37(f).

37(f)(1) Origination charges.

1. *Origination charges.* Charges included under the subheading ''Origination Charges'' pursuant to § 1026.37(f)(1) are those charges paid by the consumer to the creditor and each loan originator for originating and extending the credit, regardless of how such fees are denominated. In accordance with § 1026.37(o)(4), the dollar amounts disclosed under § 1026.37(f)(1) must be rounded to the nearest whole dollar and the percentage amounts must be disclosed as an exact number up to three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)–2 for a discussion of when a fee is considered to be ''paid to'' a person. See comment 36(a)–1 for a discussion of the meaning of ''loan originator'' in connection with limits on compensation in a consumer credit transaction secured by a dwelling.

2. *Indirect loan originator compensation.* Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under § 1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by § 1026.19(e). However, pursuant to § 1026.38(f)(1) such compensation is itemized on the Closing Disclosure required by § 1026.19(f).

3. *Description of charges.* Other than for points that the consumer will pay to the creditor to reduce the interest rate, for which specific language must be used, the creditor may use a general description to identify each service that is disclosed as an origination charge pursuant to § 1026.37(f)(1). Items that are listed under the subheading ''Origination Charges'' may include, for example, application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.

4. *Points.* If the consumer is not charged any points to reduce the interest rate, the creditor may leave blank the percentage of points disclosed under § 1026.37(f)(1)(i), but must disclose a dollar amount of ''$0.''

5. *Itemization.* Creditors determine the level of itemization of ''Origination Charges'' that is appropriate under § 1026.37(f)(1), subject to the limitations in § 1026.37(f)(1)(ii).

37(f)(2) Services you cannot shop for.

1. *Services disclosed.* Items included under the subheading ''Services You Cannot Shop For'' pursuant to § 1026.37(f)(2) are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A). Comment 19(e)(1)(iv)–1 clarifies that a consumer is not permitted to shop if the consumer must choose a provider from a list provided by the creditor. Comment 19(e)(3)(i)–1 addresses determining good faith in providing estimates under § 1026.19(e), including estimates for services for which the consumer cannot shop. Comments 19(e)(3)(iv)–1 through –3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer cannot shop.

2. *Examples of charges.* Examples of the services to be disclosed pursuant to § 1026.37(f)(2) might include appraisal fee, appraisal management company fee, credit report fee, flood determination fee, lender's attorney, tax status research fee, title—closing protection letter, and title—lender's coverage.

3. *Title insurance services.* The services required to be labeled beginning with ''Title—'' pursuant to § 1026.37(f)(2) or (3) are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction. These services may include, for example:

i. Examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued;

ii. Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met;

iii. Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies;

iv. Preparation and issuance of the policy or policies of title insurance;

v. Premiums for any title insurance coverage for the benefit of the creditor; and

vi. Conducting the closing.

4. *Lender's title insurance policy.* The amount disclosed for lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy. This amount should be disclosed as ''Title—Premium for Lender's Coverage,'' or in any similar manner

that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)–1 for a discussion of the disclosure of the premium for owner's title insurance coverage.

37(f)(3) Services you can shop for.

1. *Services disclosed.* Items included under the subheading ''Services You Can Shop For'' pursuant to § 1026.37(f)(3) are for those services: that the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A). Comments 19(e)(3)(ii)–1 through –3 address the determination of good faith in providing estimates of charges for services for which the consumer can shop. Comment 19(e)(3)(iii)–2 discusses the determination of good faith when the consumer chooses a provider that is not on the list the creditor provides to the consumer when the consumer is permitted to shop consistent with § 1026.19(e)(1)(vi)(A). Comments 19(e)(3)(iv)–1 through –3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer can shop.

2. *Example of charges.* Examples of the services to be listed under this subheading pursuant to § 1026.37(f)(3) might include pest inspection fee, survey fee, title—closing agent fee, and title—closing protection letter.

3. *Title insurance.* See comments 37(f)(2)–3 and –4 for guidance on services that are to be labeled beginning with ''Title—'' and on calculating and labeling the amount disclosed for lender's title insurance pursuant to § 1026.37(f)(3). See comment 37(g)(4)–1 for a discussion of the disclosure of the premium for owner's title insurance coverage.

37(f)(6) Use of addenda.

1. *State law disclosures.* If a creditor is required by State law to make additional disclosures that, pursuant to § 1026.37(f)(6)(i), cannot be included in the disclosures required under § 1026.37(f), the creditor may make those additional State law disclosures on a document whose pages are separate from, and are not presented as part of, the disclosures prescribed in § 1026.37. *See* comment 37(o)(1)–1.

2. *Reference to addendum.* If an addendum is used as permitted under § 1026.37(f)(6)(ii), an example of a label that would comply with the requirement for an appropriate reference on the last line is: ''See attached page for additional items you can shop for.''

37(g) Closing cost details; other costs.

1. *General description.* The items listed under the heading of ''Other Costs'' pursuant to § 1026.37(g) include services that are ancillary to the creditor's decision to evaluate the collateral and the consumer for the loan. The amounts disclosed for these items are: established by government action; determined by standard calculations applied to ongoing fixed costs; or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor. Except for prepaid interest under § 1026.37(g)(2)(iii), the creditor does not retain any of the amounts or portions of the amounts disclosed as Other Costs, nor does the creditor use any of the services listed to evaluate the collateral and the consumer for the loan.

2. *Charges pursuant to property contract.* The creditor is required to disclose charges that are described in § 1026.37(g)(1) through (3). Other charges that are required to be paid at or before closing pursuant to the property contract for sale between the consumer and seller are not disclosed on the Loan Estimate, except to the extent the creditor is aware of those charges when it issues the Loan Estimate. *See* § 1026.37(g)(4) and comment 37(g)(4)–3.

37(g)(1) Taxes and other government fees.

1. *Recording fees.* Recording fees listed under § 1026.37(g)(1) are fees assessed by a government authority to record and index the loan and title documents as required under State or local law. Recording fees are assessed based on the type of document to be recorded or its physical characteristics, such as the number of pages. Unlike transfer taxes, recording fees are not based on the sales price of the property or loan amount. For example, a fee for recording a subordination agreement that is $20, plus $3 for each page over three pages, is a recording fee, but a fee of $1,250 based on 0.5% of the loan amount is a transfer tax, and not a recording fee.

2. *Other government charges.* Any charges or fees imposed by a State or local government that are not transfer taxes are aggregated with recording fees and disclosed under § 1026.37(g)(1)(i).

3. *Transfer taxes—terminology.* In general, transfer taxes listed under § 1026.37(g)(1) are State and local government fees on mortgages and home sales that are based on the loan amount or sales price, while recording fees are State and local government fees for recording the loan and title documents. The name that is used under State or local law to refer to these amounts is not determinative of whether they are disclosed as transfer taxes or as recording fees and other taxes under § 1026.37(g)(1).

4. *Transfer taxes—consumer.* Only transfer taxes imposed on the consumer are disclosed on the Loan Estimate pursuant to § 1026.37(g)(1). State and local government transfer taxes are governed by State or local law, which determines if the seller or consumer is ultimately responsible for paying the transfer taxes. For example, if State law indicates a lien can attach to the consumer's acquired property if the transfer tax is not paid, the transfer tax is disclosed. If State or local law is unclear or does not specifically attribute transfer taxes to the seller or the consumer, the creditor is in compliance with requirements of § 1026.37(g)(1) as long as the amount of the transfer tax disclosed is not less than the amount apportioned to the consumer using common practice in the locality of the property.

5. *Transfer taxes—seller.* Transfer taxes paid by the seller in a purchase transaction are not disclosed on the Loan Estimate under § 1026.37(g)(1), but will be disclosed on the Closing Disclosure pursuant to § 1026.38(g)(1)(ii).

6. *Deletion and addition of items.* The lines and labels required by § 1026.37(g)(1) may not be deleted, even if recording fees or transfer taxes are not charged to the consumer. No additional items may be listed under the subheading in § 1026.37(g)(1).

37(g)(2) Prepaids.

1. *Examples.* Prepaid items required to be disclosed pursuant to § 1026.37(g)(2) include the interest due at consummation for the period of time before the first scheduled payment is due and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that the creditor may require the consumer to pay at consummation include:

i. Real estate property taxes due within 60 days after consummation of the transaction;

ii. Past-due real estate property taxes;

iii. Mortgage insurance premiums;

iv. Flood insurance premiums; and

v. Homeowner's insurance premiums.

2. *Interest rate.* The interest rate disclosed pursuant to § 1026.37(g)(2)(iii) is the same interest rate disclosed pursuant to § 1026.37(b)(2).

3. *Terminology.* As used in § 1026.37(g)(2), the terms ''property taxes,'' ''homeowner's insurance,'' ''mortgage insurance'' have the same meaning as those terms are used in § 1026.37(c) and its commentary.

4. *Deletion of items.* The lines and labels required by paragraph (g)(2) may not be deleted, even if amounts for those labeled items are not charged to the consumer. If an amount for a labeled item is not charged to the consumer, the time period, daily amount, and percentage may be left blank.

37(g)(3) Initial escrow payment at closing.

1. *Listed item not charged.* Pursuant to § 1026.37(g)(3), each periodic charge to be included in the escrow or reserve account must be itemized under the ''Initial Escrow Payment at Closing'' subheading, with a relevant label, monthly payment amount, and number of months expected to be collected at consummation. If an item required to be listed under § 1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period may be left blank.

2. *Aggregate escrow account calculation.* The aggregate escrow account adjustment required under § 1026.38(g)(3) and 12 CFR 1024.17(d)(2) is not included on the Loan Estimate under § 1026.37(g)(3).

3. *Terminology.* As used in § 1026.37(g)(3), the terms ''property taxes,'' ''homeowner's insurance,'' and ''mortgage insurance'' have the same meaning as those terms are used in § 1026.37(c) and its commentary.

4. *Deletion of items.* The lines and labels required by § 1026.37(g)(3) may not be deleted, even if amounts for those labeled items are not charged to the consumer.

37(g)(4) Other.

1. *Basic owner's policy rate.* The amount disclosed for an owner's title insurance premium pursuant to § 1026.37(g)(4) is based on a basic owner's policy rate, and not on an ''enhanced'' title insurance policy premium. This amount should be disclosed as ''Title—Owner's Title Policy (optional),'' or in any similar manner that includes the introductory description ''Title—'' at the beginning of the label for the item, the parenthetical description ''(optional)'' at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to § 1026.37(g)(4) is for the owner's title insurance coverage. See comment 37(f)(2)–4 for a discussion of the disclosure of the premium for lender's title insurance coverage.

2. *Simultaneous title insurance premium rate in purchase transactions.* The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

i. The title insurance premium for a lender's title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).

ii. The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage.

3. *Designation of optional items.* Products disclosed under § 1026.37(g)(4) for which the parenthetical description ''(optional)'' is included at the end of the label for the item include only items that are separate from any item disclosed on the Loan Estimate under paragraphs other than § 1026.37(g)(4). For example, such items may include owner's title insurance, credit life insurance, debt suspension coverage, debt cancellation coverage, warranties of home appliances and systems, and similar products, when coverage is written in connection with a credit transaction that is subject to § 1026.19(e). However, because the requirement in § 1026.37(g)(4)(ii) applies to separate products only, additional coverage and endorsements on insurance otherwise required by the lender are not disclosed under § 1026.37(g)(4). See comments 4(b)(7) and (b)(8)–1 through –3 and comments 4(b)(10)–1 and –2 for descriptions of credit life insurance, debt suspension coverage, debt cancellation coverage, and similar coverage and for guidance on determining when such coverage is written in connection with a transaction subject to § 1026.19(e).

4. *Examples.* Examples of other items that are disclosed under § 1026.37(g)(4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description ''(optional)'' at the end of the label for the item, and they are disclosed pursuant to § 1026.37(g) rather than § 1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under § 1026.37(g)(4), however, they may be required to be disclosed on the Closing Disclosure pursuant to § 1026.38. Comment 19(e)(3)(iii)–3 discusses application of the good faith requirement for services chosen by the consumer that are not required by the creditor.

37(g)(6) Total closing costs. Paragraph 37(g)(6)(ii).

1. *Lender credits.* Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Comment 19(e)(3)(i)–5 describes such lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.37. Comment 19(e)(3)(i)–4 addresses payments by a creditor to a consumer to pay for particular fees.

37(g)(8) Use of addenda.

1. *State law disclosures.* If a creditor is required by State law to make additional disclosures that, pursuant to § 1026.37(g)(8), cannot be included in the disclosures required under § 1026.37(g), the creditor may make those additional State law disclosures on a separate document whose pages are physically separate from, and are not presented as part of, the disclosures prescribed in § 1026.37. *See* comment 37(o)(1)–1.

37(h) Calculating cash to close.

1. *Labels for amounts disclosed.* Paragraph 37(h) describes the amounts that are used to calculate the estimated amount of cash or other form of payment that the consumer must provide at consummation. The labels used on the chart must correspond to the italicized descriptions of § 1026.37(h)(1) through (7).

37(h)(4) Deposit.

1. A deposit must be disclosed in a purchase transaction. In any other type of transaction, any deposit amount is disclosed under § 1026.37(h)(4) as $0.

37(h)(6) Seller credits.

1. Credits to be disclosed. The seller credits known to the creditor at the time of application are disclosed under § 1026.37(h)(6). Seller credits that are not known by the creditor at the time of application are not disclosed under § 1026.37(h)(6).

37(h)(7) Adjustments and other credits.

1. Other credits known at the time the Loan Estimate is issued. Amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise

identified under § 1026.37(h), would be included in the amount disclosed pursuant to § 1026.37(h)(7) to the extent known by the creditor.

2. Persons. The term ''persons'' as used in § 1026.37(h)(7) includes all individuals and any entity, regardless of the legal structure of such entity.

3. Credits. Only credits from parties other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(7). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(6) and § 1026.37(g)(6)(ii), respectively.

4. Other credits to be disclosed. Other credits known to the creditor at the time of application are disclosed under § 1026.37(h)(7). Other credits that are not known by the creditor at the time of application are not disclosed under § 1026.37(h)(7).

37(h)(8) Estimated cash to close.

1. Result of cash to close calculation. The total of § 1026.37(h)(1) through (7) is disclosed under § 1026.37(h)(8) as either a positive number, a negative number, or zero. A positive number indicates the estimated amount that the consumer can be expected to pay at consummation. A negative number indicates the estimated amount that the consumer can receive at consummation. A result of zero indicates that the consumer is anticipated to neither pay any amount or receive any amount at consummation.

37(i) Adjustable payment table.

1. When table is not permitted to be disclosed. The disclosure described in § 1026.37(i) is required only if the periodic principal and interest payment may change after consummation based on a loan term other than a change to the interest rate, or the transaction contains a seasonal payment product feature as described in § 1026.37(a)(10)(ii)(E). If the transaction does not contain such loan terms, this table may not appear on the Loan Estimate. See comment 37–1.

2. Periods to be disclosed. Section 1026.37(i)(1) through (4) requires disclosure of the periods during which interest-only, optional payment, step-payment, and seasonal payment product features will be in effect. The periods required to be disclosed should be disclosed by describing the number of payments counting from the first periodic payment due after consummation. The period of seasonal payments required to be disclosed by § 1026.37(i)(4), to be clear and conspicuous, should be disclosed with a noun that identifies the unit-period, because such feature may apply on a regular basis during the loan term that does not depend on when regular periodic payments begin. For example:

i. Period from date of consummation. If a loan has an interest-only period for the first 60 regular periodic payments due after consummation, the disclosure states ''for your first 60 payments.''

ii. Period during middle of loan term. If the loan has an interest-only period between the 61st and 85th payments, the disclosure states ''from your 61st to 85th payment.''

iii. Multiple successive periods. If there are multiple periods during which a certain adjustable payment term applies, such as a period of step payments that occurs from the first to 12th payment, does not apply to the 13th through 24th payments, and occurs again from the 25th through 36th payments, the period disclosed is the entire span of all such periods. Accordingly, such period is disclosed as ''for your first 36 payments.''

iv. Seasonal payments. For a seasonal payment product with a unit-period of a month that does not require periodic payments for the months of June, July, and August each year during the loan term, because such feature depends on calendar months and not on when regular periodic payments begin, the period is disclosed as ''from June to August.'' For a transaction with a quarterly unit-period that does not require a periodic payment every third quarter during the loan term and does not depend on calendar months, the period is disclosed as ''every third payment.'' In the same transaction, if the seasonal payment feature ends after the twentieth quarter, the period is disclosed as ''every quarter until the 20th quarter.''

37(i)(5) Principal and interest payments.

1. Statement of periodic payment frequency. The subheading required by § 1026.37(i)(5) must include the unit-period of the transaction, such as ''quarterly,'' ''bi-weekly,'' or ''annual.'' This unit period should be the same as disclosed under § 1026.37(b)(3). See § 1026.37(o)(5)(i).

2. Initial payment adjustment unknown. The disclosure required by § 1026.37(i)(5) must state the number of the first payment for which the regular periodic principal and interest payment may change. This payment is typically set forth in the legal obligation. However, if the exact payment number of the first adjustment is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible payment that may change under the terms of the legal obligation, based on the information available to the creditor at the time, as the initial payment number and amount.

3. Subsequent changes. The disclosure required by § 1026.37(i)(5) must state the frequency of adjustments to the regular periodic principal and interest payment after the initial adjustment, if any, expressed in years, except if adjustments are more frequent than once every year, in which case the disclosure should be expressed as payments. If there is only one adjustment of the periodic payment under the terms of the legal obligation (for example, if the loan has an interest-only period for the first 60 payments and there are no adjustments to the payment after the end of the interest-only period), the disclosure should state: ''No subsequent changes.'' If the loan has graduated increases in the regular periodic payment every 12th payment, the disclosure should state: ''Every year.'' If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: ''Every 6th payment.''

4. Maximum payment. The disclosure required by § 1026.37(i)(5) must state the larger of the maximum scheduled or maximum potential amount of a regular periodic principal and interest payment under the terms of the legal obligation, as well as the payment number of the first periodic principal and interest payment that can reach such amount. If the disclosed payment is scheduled, § 1026.37(i)(5) requires that the disclosure state the payment number when such payment is reached with the preceding text, ''starting at.'' If the disclosed payment is only potential, as may be the case for a loan that permits optional payments, the disclosure states the earliest payment number when such payment can be reached with the preceding text, ''as early as.'' Section 1026.37(i)(5) requires that the first possible periodic principal and interest that can reach the maximum be disclosed. For example, for a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization, the maximum periodic payment disclosed should be based on the consumer having elected to make the periodic payments that would increase the principal balance to the maximum amount at the latest time possible before the loan begins to fully amortize, which would cause the periodic principal and interest payment

to be the maximum possible. For example, if the earliest payment that could reach the maximum principal balance was the 41st payment at which time the loan would begin to amortize and the periodic principal and interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by § 1026.37(i)(5) must assume the consumer only reached the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the periodic principal and interest payment based on this assumption and state ''as early as the 61st payment.''

5. Payments that do not pay principal. Although the label of the disclosure required by § 1026.37(i)(5) is ''Principal and Interest Payments,'' and the section refers to periodic principal and interest payments, it includes a scheduled periodic payment that only covers some or all of the interest that is due and not any principal (*i.e.,* an interest-only or negatively amortizing payment).

37(j) Adjustable interest rate table.

1. When table is permitted to be disclosed. The disclosure described in § 1026.37(j) is only required if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate. If the legal obligation does not permit the interest rate to adjust after consummation, such as for a ''Fixed Rate'' product under § 1026.37(a)(10), this table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with ''N/A'' inserted within each row. See comment 37–1.

37(j)(1) Index and margin.

1. Index and margin. The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, ''LIBOR'' may be disclosed instead of London Interbank Offered Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as ''4.25%.''

37(j)(2) Increases in interest rate.

1. Adjustments not based on an index. If the legal obligation includes both adjustments to the interest rate based on an external index and scheduled and pre-determined adjustments to the interest rate, such as for a ''Step Rate'' product under § 1026.37(a)(10), the disclosure required by § 1026.37(j)(1), and not § 1026.37(j)(2), must be provided pursuant to § 1026.37(j)(2). The disclosure described in § 1026.37(j)(2) is stated only if the product type does not permit the interest rate to adjust based on an external index.

37(j)(3) Initial interest rate.

1. Interest rate at consummation. In all cases, the interest rate in effect at consummation must be disclosed as the initial interest rate, even if it will apply only for a short period, such as one month.

37(j)(4) Minimum and maximum interest rate.

1. *Minimum interest rate.* The minimum rate required to be disclosed by § 1026.37(j)(4) is the minimum interest rate that may occur at any time during the term of the transaction, after any introductory or ''teaser'' interest rate expires, under the terms of the legal obligation, such as an interest rate ''floor.'' If the terms of the legal obligation do not state a minimum interest rate, the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed.

2. Maximum interest rate. The maximum interest rate required to be disclosed pursuant to § 1026.37(j)(4) is the maximum interest rate possible under the terms of the legal obligation, such as an interest rate ''cap.'' If the terms of the legal obligation do not specify a maximum interest rate, the maximum interest rate permitted by applicable law, such as State usury law, must be disclosed.

37(j)(5) Frequency of adjustments.

1. *Exact month unknown.* The disclosure required by § 1026.37(j)(5) must state the first month for which the interest rate may change. This month is typically scheduled in the terms of the legal obligation. However, if the exact month is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible month under the terms of the legal obligation, based on the information available to the creditor at the time.

37(j)(6) Limits on interest rate changes.

1. *Different limits on subsequent interest rate adjustments.* If more than one limit applies to the amount of adjustments to the interest rate after the initial adjustment, the greatest limit on subsequent adjustments must be disclosed. For example, if the initial interest rate adjustment is capped at two percent, the second adjustment is capped at two and a half percent, and all subsequent adjustments are capped at three percent, the disclosure required by § 1026.37(j)(6)(ii) states ''3%.''

37(k) Contact information.

1. *NMLSR ID.* Section 1026.37(k) requires the disclosure of an NMLSR identification (ID) number for each creditor, mortgage broker, and loan officer identified on the Loan Estimate. The NMLSR ID is a unique number or other identifier generally assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504 (12 U.S.C. 5102(3) and (12) and 5103), and its implementing regulations (*i.e.,* 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, if the creditor, mortgage broker, or loan officer has obtained an NMLSR ID, the NMLSR IDs must be provided in the disclosures required by § 1026.37(k)(1) and (2).

2. *License number or unique identifier.* Section 1026.37(k)(1) and (2) requires the disclosure of a license number or unique identifier for the creditor, mortgage broker, and loan officer if such entity or individual has not obtained an NMLSR ID. In such event, if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities has issued a license number or other unique identifier to such entity or individual, that number is disclosed.

3. *Contact.* Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the loan officer for the consumer. The loan officer is generally the natural person employed by the person disclosed under § 1026.37(k)(2) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(k)(2), as applicable.

37(l) Comparisons.

37(l)(1) In five years.

1. *Loans with terms of less than five years.* 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.

Paragraph 37(l)(1)(i).

1. *Calculation of total payments in five years.* 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. For purposes of § 1026.37(l)(1)(i), interest is calculated using the fully-indexed rate at consummation and includes any prepaid interest. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time. 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. Loan costs are those costs disclosed pursuant to § 1026.37(f).

2. *Negative amortization loans.* For loans that permit negative amortization, the creditor calculates the total payments in five years using the negatively amortizing payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

Paragraph 37(l)(1)(ii).

1. *Calculation of principal paid in five years.* The disclosure required by § 1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by § 1026.37(l)(1)(i), except 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.

37(l)(3) Total interest percentage.

1. *General.* 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.

2. *Adjustable-rate and step-rate mortgages.* For adjustable-rate mortgages, § 1026.37(1)(3) requires that the creditor compute the total interest percentage using the fully-indexed rate. 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 associated commentary.

3. *Negative amortization loans.* For loans that permit negative amortization, § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the negatively amortizing payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

37(m) Other considerations.

37(m)(1) Appraisal.

1. *Applicability.* Section 1026.37 requires the disclosures required by this section to be made as applicable. The disclosure required by § 1026.37(m)(1) is only applicable to transactions subject to § 1026.19(e) that are also subject either to 15 U.S.C. 1639h or 1691(e), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not also subject to either of these provisions, the disclosure required by § 1026.37(m)(1) may be omitted from the Loan Estimate.

37(m)(2) Assumption.

1. *Disclosure.* Section 1026.37(m)(2) requires the creditor to 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. In many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors, such as the creditworthiness of the subsequent borrower, the potential for impairment of the creditor's security, and the execution of an assumption agreement by the subsequent borrower. 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 § 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.

2. *Original terms.* For purposes of § 1026.37(m)(2), the phrase ''original terms'' does not preclude the imposition of an assumption fee, but a modification of the legal obligation, such as a change in the contract interest rate, represents different terms.

37(m)(3) Homeowner's insurance.

1. *Optional disclosure.* Section 1026.37(m)(3) provides that creditors may, but are not required to, 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.''

2. *Relation to the finance charge.* Section 1026.4(d)(2) describes the conditions under which a creditor may exclude premiums for homeowner's insurance from the finance charge. A creditor satisfies § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

37(m)(4) Late payment.

1. *Definition.* Section 1026.37(m)(4) requires a disclosure if charges are added to an individual delinquent installment by a creditor that otherwise considers the transaction ongoing on its original terms. Late payment charges do not include: (i) the right of acceleration; (ii) fees imposed for actual collection costs, such as repossession charges or attorney's fees; (iii) referral and extension charges; or (iv) the continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate on account of a late payment by the consumer is a late payment charge to the extent of the increase.

2. *Applicability of State law.* Many State laws authorize the calculation of late charges as either a percentage of the delinquent payment amount or a specified dollar amount, and permit the imposition of the lesser or greater of the two calculations. The language provided in the disclosure may reflect the requirements and alternatives allowed under State law.

37(m)(6) Servicing.

1. *Creditor's intent.* Section 1026.37(m)(6) requires the creditor to disclose whether it intends to service the loan directly or transfer servicing to another servicer after closing. A creditor complies with § 1026.37(m)(6) if the disclosure reflects the creditor's intent at the time the Loan Estimate is issued.

37(m)(7) Liability after foreclosure.

1. *When statement is not permitted to be disclosed.* The statement required by § 1026.37(m)(7) is permitted only under the condition specified by § 1026.37(m)(7), specifically, if the purpose of the credit transaction is a refinance under § 1026.37(a)(9).

37(n) Signature statement.

1. *Signature line optional.* Whether a signature line is provided under § 1026.37(n) is determined solely by the creditor. If a signature line is provided, however, the disclosure must include the statement required by § 1026.37(n)(1).

2. *Multiple consumers.* 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.'' If there is not enough space under the heading ''Confirm Receipt'' to provide signature lines for every consumer in the transaction, the creditor may add additional signature pages, as needed, at the end of the form for the remaining consumers' signatures.

37(o) Form of disclosures.

37(o)(1) General requirements.

1. *Clear and conspicuous; segregation.* The clear and conspicuous standard requires that the disclosures required by § 1026.37 be legible and in a readily understandable form. Section 1026.37(o)(1)(i) 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. As required by § 1026.37(o)(3)(i), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H–24 in appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o).

2. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens, and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under § 1026.37(o)(1)(ii), creditors may not include any additional information with the disclosures required by § 1026.37, except as provided in § 1026.37(o)(5). Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.37(c) and should not, for example, reflect the other options available to the consumer at maturity.

37(o)(2) Estimated disclosures.

1. *Estimated amounts.* Section 1026.37(o)(2) incorporates the ''estimated'' designations reflected on form H–24 in appendix H to this part into the disclosure requirements of § 1026.37, even if the relevant provision of § 1026.37 does not expressly require disclosure of the word ''estimate.'' For example, § 1026.37(c)(2)(iv) requires disclosure of the total periodic payment labeled ''Total Monthly Payment,'' but the label on form H–24 contains the designation ''Estimated'' and thus, the label required by § 1026.37(c)(2)(iv) must contain the designation ''Estimated.'' Although many of the disclosures required by § 1026.38 cross-reference their counterparts in § 1026.37, § 1026.38(t) incorporates the ''estimated'' designations reflected on form H–25, not form H–24.

37(o)(3) Form.

1. *Non-federally related mortgage loans.* For a non-federally related mortgage loan, the creditor is not required to use form H–24 in appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o)(1)(i). Even when the creditor elects not to use the model form, § 1026.37(o)(1) requires that the disclosures be grouped together and segregated from everything else; contain only the information required by § 1026.37(a) through (n); and be provided in the same order as they occur in form H–24, using the same relative positions of the headings, labels, and similar designations as shown in the form. In addition, § 1026.37(o)(2) requires that the creditor include the designation of ''estimated'' for all headings, subheading, labels, and similar designations required by § 1026.37 for which form H–24 contains the ''estimated'' designation in such heading, subheading, label, or similar designation. The disclosures required by this section comply with the requirement to be in a format substantially similar to form H–24 when provided on letter size (8.5″ × 11″) paper.

37(o)(4) Rounding.

1. *Rounding.* Consistent with § 1026.2(b)(4), except as otherwise provided in § 1026.37(o)(4), any amount required to be disclosed by § 1026.37 must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided.

2. *Calculations.* If a dollar amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more dollar amounts that are not required to be rounded, the total amount must be rounded consistent with § 1026.37(o)(4)(i), but such component amounts used in the calculation must such exact numbers. In addition, if any such exact component amount is required to be disclosed under § 1026.37, consistent with § 1026.2(b)(4), it should be disclosed as an exact number. If an amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more components that are also required to be rounded by § 1026.37(o)(4)(i), the total amount must be calculated using such rounded amounts. For example, the subtotals required to be disclosed by § 1026.37(f)(1), (2), and (3) are calculated using the rounded amounts disclosed under those subsections. See comment 37(o)(4)(i)(C)–1. However, the amounts required to be disclosed by § 1026.37(l) reference actual amounts for their components, rather than other amounts disclosed under § 1026.37 and rounded pursuant to § 1026.37(o)(4)(i), and thus, they are calculated using exact numbers.

37(o)(4)(i) Nearest dollar.

Paragraph 37(o)(4)(i)(A).

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, pursuant to § 1026.37(o)(4)(i)(A), if § 1026.37(c)(2)(ii) requires disclosure of periodic mortgage insurance payments of $164.50, the creditor would disclose $165. However, if the periodic mortgage insurance payment required to be disclosed by § 1026.37(c)(2)(ii) were $164.49, the creditor would disclose $164.

Paragraph 37(o)(4)(i)(B).

1. *Rounding of loan amount.* Section 1026.37(o)(4)(i)(B) requires the loan amount to be disclosed without decimal places denoting cents if the amount of cents is zero. For example, if § 1026.37(b)(1) requires disclosure of a loan amount of $481,516.23, the creditor discloses the amount as $481,516.23. However, if the loan amount required to be disclosed were $481,516.00, the creditor would disclose $481,516.

Paragraph 37(o)(4)(i)(C).

1. *Rounding of the total monthly payment.* Section 1026.37(o)(4)(i)(C) requires the total monthly payment amount disclosed under § 1026.37(c)(2)(iv) to be rounded if any of its components are rounded. For example, if the total monthly payment disclosed under disclosed under § 1026.37(c)(2)(iv) is composed of a $2,000.49 periodic principal and interest payment required to be disclosed by § 1026.37(c)(2)(i) and a $164.49 periodic mortgage insurance payment required to be disclosed by § 1026.37(c)(2)(ii), the creditor would calculate the total monthly payment by adding the exact periodic principal and interest payment of $2,000.49 and the rounded periodic mortgage insurance

payment of $164, round the total, and disclose $2,164.

37(o)(4)(ii) Percentages.

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed not to use decimal places, if the amount is a whole number. For example, a 7.005 percent annual percentage rate is disclosed in compliance with § 1026.37(o)(4)(ii) as ''7.005%,'' but a 7.000 percent annual percentage rate would be disclosed as ''7%.''

37(o)(5) Exceptions.

1. *Permissible changes.* The changes required or permitted by § 1026.37(o)(5) do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in § 1026.37(o)(5) or not permitted by other provisions of § 1026.37, may affect the substance, clarity, or meaningful sequence of the disclosure and therefore are not permissible. Creditors making any changes that affect substance, clarity, or meaningful sequence will lose their protection from civil liability under TILA.

2. *Manual completion.* Section 1026.37(o) does not require the creditor to use a computer, typewriter, or other word processor to complete the disclosure form. The person may fill in information and amounts required to be disclosed by § 1026.37 on form H–24 in appendix H to this part by hand printing or using any other method, provided the person produces clear and legible text and uses the formatting required by form H–24, including replicating bold font where required. Completion by hand or typewriter does not provide an exemption from the requirement to keep records in an electronic, machine readable format under § 1026.25.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H–24 in appendix H to this part for the contact information required by § 1026.37(m) may be altered to add additional labels to accommodate the additional information of such parties, provided that the information required by § 1026.37(l), (m), and (n) are disclosed on the same page as illustrated by form H–24. If the space provided on form H–24 in appendix H to this part does not allow for the disclosure of such contact and other information on the same page, an additional page may be added to provide the required contact information with an appropriate reference to the additional page.

4. *Signature lines.* Section 1026.37(o) does not restrict the addition of signature lines to the disclosure required by § 1026.37, provided any signature lines appear only under the ''Confirm Receipt'' heading required by § 1026.37(n) as illustrated by form H–24 in appendix H to this part. If the number of signatures requested by the creditor requires space for signature lines in excess of that provided on form H–24, an additional page may be added to accommodate the additional signature lines with an appropriate reference to the additional page. Such additional page should also contain the heading and statement required by § 1026.37(n) in the format provided on form H–24.

5. *Additional page.* Information required or permitted to be disclosed by § 1026.37(o)(5) on a separate page should be formatted similarly to form H–24 in appendix H to this part, so as not affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary to not affect the substance, clarity, or meaningful sequence of the disclosure.

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

1. *As applicable.* The disclosures required by § 1026.38 are to be made only as applicable. A disclosure that is not applicable to a particular transaction generally may be eliminated entirely. For example, the disclosure required by § 1026.38(r) of the consumer or seller's real estate brokers may be eliminated for a transaction that does not involve such real estate brokers, such as a refinance or home equity loan. Alternatively, the creditor generally may include disclosures that are not applicable to the transaction and note that they are ''not applicable'' or ''N/A.''

2. *Format.* See § 1026.38(t) and its commentary for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications.

38(a) General information.

38(a)(3) Closing information.

38(a)(3)(i) Date issued.

1. *Applicable date.* For general guidance on identifying the date issued for the Closing Disclosure, see the commentary to § 1026.37(a)(4).

38(a)(3)(iv) Agent.

1. *Agency name.* Section 1026.38(a)(3)(iv) requires the name of the agency that employs the settlement agent. The name of the individual conducting the closing is not required.

38(a)(3)(vi) Property.

1. *Alternative property location.* For guidance on providing the location of a property that does not have a standard street address, see the commentary to § 1026.37(a)(6).

38(a)(3)(vii) Sale price.

1. *No seller.* In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value 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.

38(a)(4) Transaction information.

1. *Multiple borrowers and sellers.* The name and address of each consumer and seller in the transaction must be provided under the heading ''Transaction Information.'' If the form does not provide enough space to include the required information for each seller, an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3). For additional guidance on disclosing multiple borrowers, see the commentary to § 1026.37(a)(5).

2. *No seller.* In transactions where there is no seller, such as in a refinancing or home equity loan, this disclosure may be left blank.

3. *Multiple creditors.* See commentary to § 1026.37(a)(3) regarding identification requirements for multiple creditors.

38(a)(5) Loan information.

1. *General.* See commentary to § 1026.37(a)(8) through (12) for guidance on the general requirements and definitions applicable to § 1026.38(a)(5)(i) through (v).

38(b) Loan terms.

1. *Guidance.* See the commentary to § 1026.37(b) for guidance on the content of the disclosures required by § 1026.38(b).

38(c) Projected payments.

1. *In general.* For guidance on the disclosure of the projected payments table, see § 1026.37(c) and its commentary.

38(c)(1) Projected payments or range of payments.

1. *Escrow account analysis.* 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 because of the escrow account analysis described in Regulation X, 12 CFR 1024.17.

38(f) Closing cost details; loan costs.

38(f)(1) Origination charges.

1. *Guidance in other comments.* For a description of origination charges and

discount points, see comments 37(f)(1)–1, 2 and 3 of this part.

2. *Loan originator compensation.* All compensation paid to a loan originator, as defined by § 1026.36(a)(1), associated with the transaction, regardless of the party that pays the compensation, must be disclosed pursuant to § 1026.38(f)(1). Compensation from the consumer to a loan originator will be designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a loan originator will be designated as paid by others on the Closing Disclosure. Compensation to a loan originator from both the consumer and the creditor in the transaction is prohibited under § 1026.36(d)(2).

3. *Calculating compensation to a loan originator from the creditor.* The amount disclosed as paid from the creditor to a loan originator under § 1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a loan originator by the creditor. For additional guidance and examples on the calculation of compensation paid to the loan originator from the creditor, see comments 36(d)(1)–1, –2, –3 and –6.

38(f)(2) Services borrower did not shop for.

1. *Guidance in other comments.* For examples of services, costs, and their descriptions disclosed under § 1026.38(f)(2), see comments 37(f)(2)–1, 2, 3 and 4 of this part.

38(f)(3) Services borrower did shop for.

1. *Provider on written list.* Items that were disclosed pursuant to § 1026.37(f)(3) cannot be disclosed under this § 1026.38(f)(3) when the consumer selected a provider contained on the written list provided under § 1026.19(e)(1)(vi)(C). Instead, such costs are disclosed pursuant to § 1026.38(f)(2).

38(f)(5) Subtotal of loan costs.

1. *Charges subtotaled.* The only charges that are loan costs that are subtotaled pursuant to § 1026.38(f)(5) are those costs designated borrower-paid at or before closing. Charges which are loan costs designated seller-paid at or before closing, or paid by others, are not subtotaled pursuant to § 1026.38(f)(5). The subtotal of charges that are seller-paid at or before closing or paid by others is disclosed under § 1026.38(h)(2).

38(g) Closing costs details; other costs.

38(g)(1) Taxes and other government fees.

1. *Guidance.* For additional guidance on taxes and other government fees, see comments 37(g)(1)–1, –2, –3 and –4.

38(g)(2) Prepaids.

1. *Guidance.* For additional guidance on prepaids, see comment 37(g)(2)–1.

2. *Negative prepaid interest.* The prepaid interest amount is disclosed as a negative number if the calculation of prepaid interest results in a negative number.

3. *No prepaid interest.* 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 must be disclosed under § 1026.38(g)(2).

38(g)(3) Initial escrow payment at closing.

1. *Initial escrow account itemization.* The creditor must state the amount that it will 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 periodic charge to be included in the escrow or reserve account must be itemized under the ''Initial Escrow Payment at Closing'' subheading, with a relevant label, monthly payment amount, and number of months collected at closing.

2. *Aggregate accounting.* The method used to determine the aggregate adjustment for the purposes of establishing the escrow account is described in 12 CFR 1024.17(d)(2). Examples of this calculation methodology can be found in appendix E to 12 CFR part 1024.

38(g)(4) Other.

1. *Costs disclosed.* The costs disclosed under § 1038(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or disclosed elsewhere under § 1026.38.

2. *Owner's title insurance premium.* In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under § 1026.38(g)(4) is 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 § 1026.38(f)(2) or (f)(3). Section 1026.38(g)(4)(i) requires that the disclosure of the cost of the premium for an owner's title insurance policy must include ''Title—'' at the beginning of the label. In addition, § 1026.38(g)(4)(ii) requires that the disclosure of the cost of the premium for an owner's title insurance policy must include the parenthetical ''(optional)'' at the end of the label when designated borrower-paid at or before closing.

3. *Guidance.* For additional guidance on the use of the term ''(optional)'' under § 1038(g)(4)(ii), see comment 37(g)(4)–3.

38(g)(6) Subtotal of costs.

1. *Costs subtotaled.* The only costs that are subtotaled pursuant to § 1026.38(g)(6) are those costs that are designated borrower-paid at or before closing. Costs that are other costs designated seller-paid at or before closing, or paid by others, are not subtotaled pursuant to § 1026.38(g)(6). The subtotal of charges that are designated seller-paid at or before closing or paid by others is disclosed under § 1026.38(h)(2).

38(h) Closing cost totals.

Paragraph 38(h)(2).

1. *Charges paid by seller and by others subtotaled.* All loan costs and other costs that are designated seller-paid at or before closing, or paid by others, are also totaled under § 1026.38(h)(2).

Paragraph 38(h)(3).

1. *General lender credits.* When the consumer receives a generalized credit from creditor for closing costs, the amount of the credit must be disclosed. However, if such credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the paid by others column in the Closing Cost Details tables under § 1026.38(f) or (g). For a description of lender credits from the creditor, see comment 17(c)(1)–19. For a discussion of determining amounts of general lender credits, see comment 19(e)(3)(i)–5. For a discussion of lender credits for specific charges, see comment 19(3)(i)–4.

2. *Credits for excess charges.* Credits from the creditor to offset an amount charged in excess of the limitations described in § 1026.19(e)(ii) are disclosed pursuant to § 1026.38(h)(3), along with a statement that such amount was paid to offset an excess charge, with funds other than closing funds. If an excess charge is discovered after the revised Closing Disclosure has been provided, the revised form must be provided to the consumer and other appropriate parties, as described under § 1026.19(f)(2)(iii).

Paragraph 38(h)(4).

1. *Consistent terminology and order of charges.* On the Closing Disclosure the creditor must use terminology that is consistent with that used on the Loan Estimate to identify each corresponding

loan cost and other cost. In addition, § 1026.38(h)(4) requires the creditor to list the costs disclosed under each subcategory of charges in a consistent order. If costs move between subheadings under § 1026.38(f)(2) and (f)(3) of this part, listing the costs in alphabetical order in each subheading category is considered to be in compliance with § 1026.38(h)(4).

38(i) Calculating cash to close.

1. *More prominent disclosures.* Sections 1026.38(i)(1)(iii), 1026.38(i)(2)(iii), 1026.38(i)(3)(iii), 1026.38(i)(4)(iii), 1026.38(i)(5)(iii), 1026.38(i)(6)(iii), 1026.38(i)(7)(iii), and 1026.38(i)(8)(iii) require that statements are given as to whether the ''Final'' amount disclosed under each subparagraph (ii) of §§ 1026.38(i)(1) through (i)(8) is different or equal to, and in some cases whether the amount is greater than or less than, the corresponding ''Estimate'' amount disclosed under each subparagraph (i) of §§ 1026.38(i)(1) through (i)(8). These statements are more prominent than the other disclosures under § 1026.38(i). The statement of whether the estimated and final amounts are different, stated as a ''Yes'' or ''No'' in capital letters and boldface font, under the subheading ''Did this change?,'' as shown on form H–25 in appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of ''No'' satisfies the requirement to state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading ''Did this change?'' for a ''Yes'' answer are displayed more prominently than other disclosures. For example, under § 1026.38(i)(1)(iii)(A), this more prominent statement could take the form of the phrases ''Total Loan Costs (D)'' and ''Total Other Costs (I)'' being shown in boldface, as shown on form H–25 in appendix H to this part. See comments 38(i)–3 and –4 for further guidance regarding the prominence of such statements.

2. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise stated. See comment 38(t)(4)–1. As a result, any ''Final'' amount that is disclosed in the ''Calculating Cash to Close'' table under § 1026.38(i) is shown to two decimal places unless otherwise stated. Pursuant to § 1026.38(t)(4)(i)(C), however, any ''Estimate'' amount that is disclosed in the ''Calculating Cash to Close'' table under § 1026.38(i) is shown to the nearest dollar amount, and thus matches the corresponding estimated amount disclosed on the Loan Estimate's ''Calculating Cash to Close'' table under § 1026.37(h), which is shown to the nearest whole dollar pursuant to § 1026.37(o)(4)(i)(A). For this reason, a ''Final'' amount shown to two decimal places could be a larger number than its corresponding ''Estimate'' amount shown to the nearest whole dollar, when, in fact, the apparent increase is due solely to rounding. Therefore, for purposes of §§ 1026.38(i)(1)(iii), 1026.38(i)(2)(iii), 1026.38(i)(3)(iii), 1026.38(i)(4)(iii), 1026.38(i)(5)(iii), 1026.38(i)(6)(iii), 1026.38(i)(7)(iii), and 1026.38(i)(8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure 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. For example, if the ''Estimate'' amount of ''Total Closing Costs'' disclosed under § 1026.38(i)(1)(i) is $12,500, and the ''Final'' amount of ''Total Closing Costs'' disclosed under § 1026.38(i)(1)(ii) is $12,500.35, then even though the table would appear to show a $0.35 increase in ''Total Closing Costs,'' no statement of such increase is given under § 1026.38(i)(1)(iii) so long as the actual, non-rounded estimate (*i.e.,* the estimated amount of ''Total Closing Costs'' that would have been shown on the Loan Estimate to two decimal places) is equal to $12,500.35.

3. *Statements that the consumer should see details.* The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H–25 in appendix H to this part contains examples of these statements. 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 form H–25, the statement, ''See Seller Credits in Section L,'' in which the words ''Section L'' are boldface, complies with this provision. In addition, for example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(ii), and the following similar statement to that shown on form H–25 for § 1026.38(i)(7)(iii)(A), ''See Deposit in Section L,'' complies with this provision.

4. *Statements of increases or decreases.* The statements of whether there is a difference between the final and estimated amounts under the subheading ''Did this change?,'' as required by § 1026.38(i). The provisions of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), and (i)(6)(iii)(A) each require a statement of whether the amount increased or decreased from the estimated amount. Form H–25 in appendix H to this part contains an example of the statement required by § 1026.38(i)(6)(iii)(A). For the provisions of § 1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A), the statement, ''You increased this payment,'' in which the word ''increased'' is boldface and is replaced with the word ''decreased'' as applicable, complies with this provision.

38(i)(1) Total closing costs.

Paragraph 38(i)(1)(i).

1. *Reference to disclosure of total closing costs.* Under § 1026.38(i)(1)(i), the amount disclosed is labeled ''Total Closing Costs,'' and such label is accompanied by a reference to the disclosure of ''Total Closing Costs'' under § 1026.38(h)(1). This reference may take the form, for example, of a cross-reference in parenthesis to the row on the table disclosed under § 1026.38(h) that includes the itemized amount for ''Total Closing Costs,'' as shown on form H–25 in appendix H to this part.

Paragraph 38(i)(1)(iii)(A).

1. *Statements and references regarding the total loan costs and total other costs.* Under § 1026.38(i)(1)(iii)(A), the statements 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 § 1026.38(f)(4) and (g)(5) is made only if and to the extent the difference in the ''Total Closing Costs'' is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the ''Total Closing Costs'' is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading ''Services Borrower Did Not Shop For,'' itself under the heading ''Loan Costs''), then a statement is given under the subheading ''Did this change?'' that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under § 1026.38(f)(4). If the increase in ''Total Closing Costs'' is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading ''Taxes

and Other Government Fees,'' itself under the heading ''Other Costs''), then a statement is given under the subheading ''Did this change?'' that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under § 1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given 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 § 1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under §§ 1026.38(f)(4) and (g)(5), see comment 38(i)(1)(i)–1. For an example of such reference, see form H–25 in appendix H to this part.

2. *Disclosure of excess amounts above limitations on increases in closing costs.*

i. Because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.,* fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.,* recordation fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(i)(1)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account 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. For example, if the Loan Estimate included under ''Services You Cannot Shop For'' a $30 charge for a ''title courier fee,'' but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the ''Total Closing Costs'' that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third party service was actually provided, albeit at a lower amount than estimated.

iii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account 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. Such a charge would be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

38(i)(2) Closing costs subtotal paid before closing.

Paragraph 38(i)(2)(i).

1. *Estimate of closing costs subtotal paid before closing.* Under § 1026.38(i)(2)(i), the ''Estimate'' amount for ''Closing Costs Subtotal Paid Before Closing'' is always shown as ''$0,'' because an estimate of such amount is not disclosed on the Loan Estimate.

Paragraph 38(i)(2)(iii)(B).

1. *Equal amount.* Under § 1026.38(i)(2)(iii)(B), the creditor or closing agent will give a statement that the ''Final'' amount disclosed under § 1026.38(i)(2)(ii) is equal to the ''Estimate'' amount disclosed under § 1026.38(i)(2)(i), only if the ''Final'' amount is $0, because the ''Estimate'' amount is always disclosed as $0 pursuant to § 1026.38(i)(2)(i). See comment 38(i)(2)(i)–1.

38(i)(4) Downpayment/funds from borrower.

Paragraph 38(i)(4)(ii)(A).

1. *Downpayment.* Under § 1026.38(i)(4)(ii)(A), in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the ''Final'' amount disclosed for ''Downpayment/Funds from Borrower'' reflects any change, following delivery of the Loan Estimate, in the amount of down payment required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

Paragraph 38(i)(4)(ii)(B).

1. *Funds from borrower.* Section 1026.38(i)(4)(ii)(B) provides that, in a transaction other than a purchase as defined in § 1026.37(a)(9)(i), the ''Final'' amount disclosed for ''Downpayment/Funds from Borrower'' is the amount of ''Funds from Borrower'' determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the ''Final'' amount of ''Funds from Borrower'' to be disclosed under § 1026.38(i)(4)(ii)(B) is determined 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, and is disclosed either as a positive number or $0 depending on the result of the calculation. An increase in the ''Final'' amount of ''Funds from Borrower'' compared to the corresponding ''Estimate'' amount might result, for example, from a decrease in the amount of the credit extended or an increase in the payoff amount for the consumer's existing debt that is secured by the property. For additional guidance regarding the determination of the ''Funds from Borrower'' amount, see comment 38(i)(6)(ii)–1.

Paragraph 38(i)(4)(iii)(A).

1. *Statement of differences.* Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the ''Downpayment/Funds from Borrower'' amount is disclosed. For example, in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), if the purchase price of the property has increased and therefore caused the ''Downpayment'' amount to increase, the statement, ''You increased this payment. See details in Section K,'' with the words ''increased'' and ''Section K'' in boldface text, complies with this requirement. In a purchase or refinancing transaction, in the event the amount of the credit extended by the creditor has decreased and therefore caused the ''Funds from Borrower'' amount to increase, the statement can read, for example, ''You increased this payment. See details in Section L,'' with the same boldface text.

38(i)(6) Funds for borrower.

Paragraph 38(i)(6)(ii).

1. *Final funds for borrower.* Section 1026.38(i)(6)(ii) provides that the

''Final'' amount for ''Funds for Borrower'' is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the ''Final'' amount of ''Funds for Borrower'' to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting from the total amount of all existing debt being satisfied in the transaction 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), and is disclosed under § 1026.38(i)(6)(ii) either as a negative number or $0.00 depending on the result of the calculation. The ''Final'' amount of ''Funds for Borrower'' disclosed under § 1026.38(i)(6)(ii) is the amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

38(i)(7) Seller credits.

Paragraph 38(i)(7)(ii).

1. *Final seller credits.* Under § 1026.38(i)(7)(ii), the ''Final'' amount of ''Seller Credits'' reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized (*i.e.*, lump sum) credits for closing costs or for allowances for items purchased separately (*e.g.*, if the seller is a builder). Seller credits are distinguished from payments by the seller for items attributable to periods of time prior to consummation, which are among the ''Adjustments and Other Credits'' separately disclosed pursuant to § 1026.38(i)(8). For additional guidance regarding seller credits, see comments 38(j)(2)(v)–1 and –2.

38(i)(8) Adjustments and other credits.

Paragraph 38(i)(8)(ii).

1. *Adjustments and other credits.* Under § 1026.38(i)(8)(ii), the ''Final'' amount for ''Adjustments and Other Credits'' would include, for example, prorations of taxes or homeowners' association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(7), 1026.38(j)(2)(vi), and 1026.38(j)(2)(xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

38(i)(9) Cash to close.

Paragraph 38(i)(9)(ii).

1. *Final cash to close amount.* The ''Final'' amount of ''Cash to Close'' disclosed under § 1026.38(i)(9)(ii) is the same as the amount disclosed on the Closing Disclosure as ''Cash to Close'' under § 1026.38(j)(3)(iii). If the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

2. *More prominent disclosure.* Section 1026.38(i)(9)(ii) requires that the disclosure of the ''Final'' amount of ''Cash to Close'' be more prominent than the other disclosures under § 1026.38(i). Such more prominent disclosure can take the form, for example, of boldface font, as shown on form H–25 in appendix H to this part.

38(j) Summary of borrower's transaction.

1. *In general.* It is permissible to have two separate Closing Disclosures in a transaction: One that reflects the consumer's costs and credits only, which is provided to the consumer, and one with the seller's costs and credits only, which is provided to the seller. *See* § 1026.38(t)(5)(vii) and (viii). Some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer.

2. *Addendums.* Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure, and for the purpose of including customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred). *See* § 1026.38(t)(5)(vi).

3. *Identical amounts.* The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and § 1026.38(k)(1)(ii); § 1026.38(j)(1)(iii) and § 1026.38(k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and § 1026.38(k)(1)(iv); § 1026.38(j)(1)(vii) and § 1026.38(k)(1)(vi); § 1026.38(j)(1)(viii) and § 1026.38(k)(1)(vii); § 1026.38(j)(1)(ix) and § 1026.38(k)(1)(viii); § 1026.38(j)(1)(x) and § 1026.38(k)(1)(ix); § 1026.38(j)(2)(iv) and § 1026.38(k)(2)(iv); § 1026.38(j)(2)(v) and § 1026.38(k)(2)(vii); § 1026.38(j)(2)(viii) and § 1026.38(k)(2)(x); § 1026.38(j)(2)(ix) and § 1026.38(k)(2)(xi); § 1026.38(j)(2)(x) and § 1026.38(k)(2)(xii); and § 1026.38(j)(2)(xi) and § 1026.38(k)(2)(xiii).

38(j)(1) Itemization of amounts due from borrower.

Paragraph 38(j)(1)(ii).

1. *Contract sales price and personal property.* Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. Personal property is defined by state law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

Paragraph 38(j)(1)(v).

1. *Contractual adjustments.* Section 1026.38(j)(1)(v) requires disclosure of amounts owed by the consumer that are not otherwise disclosed pursuant to § 1026.38(j). For example, the following items must be disclosed under § 1026.38(j), to the extent applicable:

i. The balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;

ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; or

iii. The treatment of any tenant security deposit.

2. *Other consumer charges.* The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed pursuant to § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any existing holders of liens on the property in a refinance transaction, and any outstanding real estate property taxes are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of seller's transaction under § 1026.38(k)(1)(iv).

Paragraph 38(j)(1)(x).

1. *Additional adjustments.* Examples of items for which adjustments may be made include taxes, other than those disclosed pursuant to § 1026.38(j)(1)(vii) and (viii), paid in advance for an entire year or other period, when the real

estate closing occurs prior to the expiration of the year or other period for which they were paid. Additional examples of items for which adjustments may be made include:

i. Flood and hazard insurance premiums, if the consumer is being substituted as an insured under the same policy;

ii. Mortgage insurance in loan assumptions;

iii. Planned unit development or condominium association assessments paid in advance;

iv. Fuel or other supplies on hand, purchased by the seller, which the consumer will use when consumer takes possession of the property; and

v. Ground rent paid in advance.

38(j)(2) Itemization of amounts already paid by or on behalf of borrower.

Paragraph 38(j)(2)(ii).

1. *Deposit.* All amounts paid into a trust account by the consumer pursuant to the contract of sale for real estate, any addenda thereto, or any other agreement between the consumer and seller must be disclosed under § 1026.38(j)(2)(ii).

2. *Reduction of deposit when deposit used to pay for closing charges prior to closing.* If the consumer's deposit has been applied toward a charge for a closing cost, the amount applied should not be included in the amount disclosed pursuant to § 1026.38(j)(2)(ii), but instead should be shown on the appropriate line for the closing cost in the Closing Cost Detail tables pursuant to § 1026.38(f) or (g), designated borrower-paid before closing.

Paragraph 38(j)(2)(iii).

1. *First user loan.* For purposes of § 1026.38(j), a first user loan is a loan to finance construction of a new structure or purchase of manufactured home that is known at the time of consummation to be real property under state law, where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user. For other loans subject to § 1026.19(f) that finance construction of a new structure or purchase of a manufactured home that is known at the time of consummation to be real property under State law, the sales price of the land and the construction cost or purchase price of the manufactured home should be disclosed separately and the amount of the loan in the current transaction must be disclosed. The remainder of the Closing Disclosure should be completed taking into account adjustments and charges related to the temporary financing and permanent financing that are known at the time of consummation.

Paragraph 38(j)(2)(iv).

1. *Assumption of existing loan obligation of seller by consumer.* The outstanding amount of any loan that the consumer is assuming, or subject to which the consumer is taking title to the property must be disclosed under § 1026.38(j)(2)(iv).

Paragraph 38(j)(2)(v).

1. *General seller credits.* When the consumer receives a generalized credit from the seller for closing costs or where the seller (typically a builder) is making an allowance to the consumer for items to purchase separately, the amount of the credit must be disclosed. However, if the seller credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to § 1026.38(f) or (g), that amount should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g).

2. *Other seller credits.* 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 § 1026.38(j)(2)(v).

Paragraph 38(j)(2)(vi).

1. *Credits from any party other than the seller or creditor.* Section 1026.38(j)(2)(vi) requires disclosure of a description and the amount of items paid by or on behalf of the consumer and not disclosed elsewhere under § 1026.38(j)(2). For example, credits a consumer receives from a real estate agent or other third party, other than a seller or creditor, are disclosed pursuant to § 1026.38(j)(2)(vi). However, if the credit is attributable to a specific closing cost listed in the Closing Cost Details tables under § 1026.38(f) or (g), that amount should be reflected in the paid by others column on the Closing Cost Details tables and not in the disclosure required under § 1026.38(j)(2)(vi). Similarly, if a real estate agent rebates a portion of the agent's commission to the consumer, the rebate should be listed as a credit along with a description of the rebate, which must include the name of the party giving the credit.

2. *Subordinate financing proceeds.* Any financing arrangements or other new loans not otherwise disclosed pursuant to § 1026.38(j)(2)(iii) or (iv) must also be disclosed pursuant to § 1026.38(j)(2)(vi). For example, if the consumer is using a second mortgage or note to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the loan disclosed with a brief explanation. If the net proceeds of a second loan are less than the principal amount of the second loan, the net proceeds may be listed on the same line as the principal amount of the second loan. For an example, see form H–25 in appendix H to this part.

3. *Satisfaction of existing subordinate liens by consumer.* For payments to subordinate lien holders by or on behalf of the consumer, disclosure of any amounts paid with funds other than closing funds, as defined under § 1026.38(j)(4)(ii), in connection with the second mortgage payoff are required to be disclosed under § 1026.38(j)(2)(vi), with a statement that such amounts were paid outside of closing funds.

4. *Transferred escrow balances.* In a refinance transaction, any transferred escrow balance is listed as a credit pursuant to § 1026.38(j)(2)(vi), along with a description of the transferred escrow balance.

5. *Gift funds.* A credit must be disclosed for any money or other payments made by family members or third parties not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi).

Paragraph 38(j)(2)(xi).

1. *Examples.* Examples of items that would be disclosed under § 1026.38(j)(2)(xi) include:

i. Utilities used but not paid for by the seller;

ii. Rent collected in advance by the seller from a tenant for a period extending beyond the closing date; and

iii. Interest on loan assumptions.

38(j)(3) Calculation of borrower's transaction.

Paragraph 38(j)(3)(iii).

1. *Stating if a mount is due to or from consumer.* To comply with § 1026.38(j)(3)(iii), the creditor must state either the cash required from the consumer at consummation, or cash payable to the consumer at consummation, as described under § 1026.38(j)(2)(iii).

2. *Methodology.* To calculate the cash to close, total the amounts disclosed under § 1026.38(j)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due from the consumer. If the calculation results in a negative amount, the amount is due to the consumer.

38(j)(4) Items paid outside of closing funds.

Paragraph 38(j)(4)(i).

1. *Charges not paid with closing funds.* Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed pursuant to § 1026.38(j) be marked as ''paid outside of closing'' or ''P.O.C.'' The disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator,

real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H–25 in appendix H to this part. For an explanation of what constitutes closing funds, see § 1026.38(j)(4)(ii).

2. *Items paid without closing funds not included in totals.* Charges that are paid outside of closing funds under § 1026.38(j)(4)(i) should not be included in computing totals under § 1026.38(j)(1) and (j)(2).

38(k) Summary of seller's transaction.

1. *Transactions with no seller.* Section 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction.

2. *Extra line items.* For guidance regarding the use of an addendum, see comment 38(j)–2.

3. Identical amounts. For guidance regarding the amounts disclosed under certain provisions of § 1026.38(k) are the same as amounts disclosed under certain provisions of § 1026.38(j), see comment 38(j)–3.

38(k)(2) Itemization of amounts due from seller.

Paragraph 38(k)(2)(ii).

1. *Excess deposit disbursed to seller by party other than closing agent.* If the seller's real estate broker or other party who is not the closing agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party, the excess deposit must be disclosed pursuant to § 1026.38(k)(2)(ii), if that party will provide the excess deposit directly to the seller, rather than through the closing agent.

2. *Distributions of deposit to seller prior to consummation.* If the deposit or any portion thereof has been disbursed to the seller prior to closing, only the amount of the deposit that has not been distributed to the seller must be disclosed under § 1026.38(k)(2)(ii).

Paragraph 38(k)(2)(iv).

1. *Assumption of existing loan obligation of seller by consumer.* If the consumer is assuming or taking title subject to existing liens and the amounts of the outstanding balance of the lien are to be deducted from sales price, the amounts of the outstanding balance of the lien must be disclosed under § 1026.38(k)(2)(iv).

2. *Other seller credits.* 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 the real estate closing, are disclosed under § 1026.38(k)(2)(vii).

Paragraph 38(k)(2)(viii).

1. *Satisfaction of other seller obligations.* Seller obligations, other than second liens, that must be paid off to clear title to the property must be disclosed pursuant to § 1026.38(k)(2)(viii). Examples of disclosures pursuant to § 1026.38(k)(2)(viii) include the satisfaction of outstanding liens imposed due to Federal, State, or local income taxes, real estate property tax liens, judgments against the seller reduced to lien upon the property, or any other obligations the seller wishes the closing agent to pay from their proceeds at the real estate closing.

2. *Consumer satisfaction of outstanding subordinate loans.* If the consumer is satisfying existing liens which will not be deducted from the sales price, the amount of the outstanding balance of the loan must be disclosed under § 1026.38(k)(2)(viii). For example, the amount of any second lien which will be paid as part of the real estate closing that is not deducted from the seller's proceeds under § 1026.38(k)(2)(iv), is disclosed under § 1026.38(k)(2)(viii). For payments to the subordinate lien holder, any amounts paid must be disclosed, and other amounts paid by or on behalf of the seller must be disclosed as paid outside of closing funds under § 1026.38(j)(2)(vi). For additional discussion, see comment 38(j)(2)(vi)–2.

3. *Escrows held by closing agent for payment of invoices received after consummation.* Funds to be held by the closing agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known must be disclosed under § 1026.38(k)(2)(viii). Subsequent disclosure of the actual amount of these post-closing items to be paid from closing funds is optional.

38(k)(3) Calculation of seller's transaction.

1. *Stating if amount is due to or from seller.* To comply with § 1026.38(k)(3)(iii), the creditor must state either the cash required from the seller at closing, or cash payable to the seller at closing, as described under § 1026.38(k)(2)(iii).

2. *Methodology.* To calculate the cash due to or from the consumer, total the amounts disclosed under § 1026.38(k)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due to the seller. If the calculation results in a negative amount, the amount is due from the seller.

38(k)(4) Items paid outside of closing funds.

1. *Guidance.* For guidance regarding the disclosure of items paid with funds other than closing funds, see comments 38(j)(4)–1 and –2.

38(l) Loan disclosures.

38(l)(2) Demand feature.

1. *Covered features.* See comment 18(i)–2 for a description of demand features triggering the disclosure requirements of § 1026.38(l)(2).

38(l)(3) Late payment.

1. *Guidance.* See the commentary to § 1026.37(m)(4) for guidance on disclosing late payment requirements under § 1026.38(l)(3).

38(l)(7) Escrow account.

Paragraph 38(l)(7)(i)(A)(2).

1. *Estimated costs not paid by escrow account funds.* Section 1026.38(l)(7)(i)(A)(2) requires the creditor to estimate the 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 that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established for the payment of any amounts described in § 1026.37(c)(4)(ii). The creditor complies with this provision by disclosing the amount of such charges used to calculate the estimated taxes, insurance, and assessments disclosed pursuant to § 1026.38(c)(1) as the total amount scheduled to be paid during the first year after consummation.

Paragraph 38(l)(7)(i)(A)(4).

1. *Estimated costs paid using escrow account funds.* The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation pursuant to § 1026.38(l)(7)(i)(A)(4) is the amount of estimated escrow payments disclosed pursuant to § 1026.38(c)(1).

Paragraph 38(l)(7)(i)(B)(1).

1. *Estimated costs paid directly by the consumer.* The estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) that are known to the creditor in the absence of an escrow account during the first year after consummation pursuant to § 1026.38(l)(7)(i)(B)(1) is the amount of estimated taxes, insurance, and assessments disclosed pursuant to § 1026.38(c)(1) as the estimated total amount scheduled to be paid during the first year after consummation. The creditor discloses this amount only if no escrow account will be established for the payment of amounts described in § 1026.37(c)(4)(ii).

38(m) Adjustable payment table.

1. *Guidance.* See the commentary to § 1026.37(i) for guidance regarding the disclosure required by § 1026.38(m).

2. *Master heading.* The disclosure required by § 1026.38(m) is required to be provided under a different master heading than the disclosure required by

§ 1026.37(i), but all other requirements applicable to the disclosure required by § 1026.37(i) apply to the disclosure required by § 1026.38(m).

3. *When table is not permitted to be disclosed.* Like the disclosure required by § 1026.37(i), the disclosure required by § 1026.38(m) is permitted only if the periodic principal and interest payment may change after consummation based on a loan term other than on an adjustment to the interest rate or if the transaction is a seasonal payment product as described under § 1026.37(a)(10)(ii)(E). If the transaction does not contain these terms, this table is not permitted on the Closing Disclosure. See comments 37–1 and 37(i)–1.

4. *Final loan terms.* The disclosures required by § 1026.38(m) must include the information required by § 1026.37(i), as applicable, but the creditor must make the disclosure using the information that is known at the time the disclosure is required to be provided by § 1026.19(f).

38(n) Adjustable interest rate table.

1. *Guidance.* See the commentary to § 1026.37(j) for guidance regarding the disclosures required by § 1026.38(n).

2. *Master heading.* The disclosure required by § 1026.38(n) is required to be provided under a different master heading than the disclosure required by § 1026.37(j), but all other requirements applicable to the disclosure required by § 1026.37(j) apply to the disclosure required by § 1026.38(n).

3. *When table is not permitted to be disclosed.* Like the disclosure required by § 1026.37(j), the disclosure required by § 1026.38(n) is permitted only if the interest rate may change after consummation based on the terms of the legal obligation. If the interest rate will not change after consummation, this table is not permitted on the Closing Disclosure. See comments 37–1 and 37(j)–1.

4. *Final loan terms.* The disclosures required by § 1026.38(n) must include the information required by § 1026.37(j), as applicable, but the creditor must make the disclosure using the information that is known at the time the disclosure is required to be provided by § 1026.19(f).

38(o) Loan Calculations.

38(o)(1) Total of payments.

1. *Calculation of total of payments.* 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. For guidance on the amounts included in the total of payments calculation, see comment 37(1)(1)(i)–1.

38(o)(2) Finance charge.

1. *Calculation of finance charge.* The finance charge is calculated in accordance with the requirements of § 1026.4 and its commentary and is expressed as a dollar amount.

2. *Disclosure.* The finance charge is disclosed as a total amount; the components of the finance charge are not itemized.

38(o)(3) Amount financed.

1. *Calculation of amount financed.* The amount financed is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

38(o)(5) Total interest percentage.

1. *In general.* For guidance on calculation and disclosure of the total interest percentage, see § 1026.37(l)(3) and its commentary.

38(p) Other disclosures.

38(p)(1) Appraisal.

1. *Applicability.* Section 1026.38 provides that the disclosures must be made as applicable. The disclosure required by § 1026.38(p)(1) is only applicable to closed-end transactions subject to § 1026.19(f) that are also subject either to 15 U.S.C. 1639h or 1691(e), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not subject to either of those provisions, the disclosure required by § 1026.38(p)(1) may be omitted from the Closing Disclosure.

38(p)(3) Liability after foreclosure.

1. *State law requirements.* If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, whether the consumer has continued or additional responsibility for the loan balance after foreclosure, and the conditions under which liability occurs, will vary by state. Section 1026.38(p)(3) requires the creditor to provide a brief description of the applicable State's requirements. Any type of protection afforded by State law, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, requires a statement that State law may protect the consumer from liability for the unpaid balance.

38(q) Questions notice.

Paragraph 38(q)(3).

1. *Prominent question mark.* The notice required under § 1026.38(q) includes a prominent question mark. This prominent question mark is an aspect of form H–25 in appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). 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 (1) 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 (2) the creditor or closing agent otherwise complies with § 1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure.

38(r) Contact information.

1. *Each person to be identified.* Form H–25 in appendix H to this part includes the contact information required to be disclosed under § 1026.38(r) generally in a five-column tabular format (*i.e.,* there are columns from left to right that disclose the contact information for the creditor, mortgage broker, consumer's real estate broker, seller's real estate broker, and closing agent). Because § 1026.38 requires disclosures only to the extent applicable, columns are either left blank or filled in with ''N/A'' where no such person is participating in the transaction. For example, if there is no mortgage broker involved in the transaction, the column for the mortgage broker is either left blank or filled in with ''N/A.'' Conversely, in the event the transaction involves more than one of each such person (*e.g.,* two seller's real estate brokers splitting a commission), the contact information table may be altered to accommodate the information for such persons, provided that the other information is disclosed on the same page. If the format of the page does not accommodate the addition of such information, an additional table to accommodate the information may be provided on a separate page, with an appropriate reference to the additional table. See § 1026.38(t)(2)(x). A creditor or closing agent may also omit a column on the table that is inapplicable or, if necessary, replace an inapplicable column with the contact information for the additional person.

2. *Name of person.* Where § 1026.38(r)(1) calls for disclosure of the name of the person participating in the transaction, the person's legal name (*e.g.,* the name used for registration, incorporation, or chartering purposes), the person's trade name, if any, or an abbreviation of the person's legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required by § 1026.38(t)(1)(i). For example, if the creditor's legal name is ''Alpha Beta Chi Bank and Trust Company, N.A.'' and its trade name is ''ABC Bank,'' then under § 1026.38(r)(1) the full legal name, the trade name, or an abbreviation such as

''ABC Bank & Trust Co.'' may be disclosed. However, the abbreviation ''Bank & Trust Co.'' is not distinct as to enable a consumer to identify the person, and therefore would not be clear and conspicuous. If the creditor, mortgage broker, seller's real estate broker, consumer's real estate broker, or closing agent participating in the transaction is a natural person, the natural person's name is listed in the § 1026.38(r)(1) and (r)(4) disclosures (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

3. *Address.* The address disclosed under § 1026.38(r)(2) is the identified person's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. If a natural person's name is to be disclosed under § 1026.38(r)(1), see comment 38(r)–2, the business address of such natural person is listed (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

4. *NMLSR ID.* Section 1026.38(r)(3) and (5) requires the disclosure of an NMLSR identification (ID) number for each person identified in the table. The NMLSR ID is a unique number or other identifier that is generally assigned by the Nationwide Mortgage Licensing System & Registry (NMLSR) to individuals registered or licensed through NMLSR to provide loan originating services (for more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504, 12 U.S.C. 5102(3) and (12) and 5103, and its implementing regulations (*i.e.,* 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, any NMLSR ID that is obtained by a creditor or mortgage broker entity disclosed under § 1026.38(r)(1), as applicable, or a natural person disclosed under § 1026.38(r)(4), either as required under the SAFE Act or otherwise, is disclosed. If the creditor, mortgage broker, or natural person has an NMLSR ID and a separate license number or unique identifier issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity or person's business activities, only the NMLSR ID is disclosed. Because § 1026.38 requires disclosures only to the extent applicable, the table is left blank, or ''N/A'' is entered, for these disclosures in the columns corresponding to persons that have no NMLSR ID and no license number or unique identifier to be disclosed under § 1026.38(r)(3) and (5), see comment 38(r)–5; provided that, the creditor or closing agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. See § 1026.38(t)(2)(xii) and comment 38(r)–1.

5. *License number or unique identifier.* Section 1026.38(r)(3) and (5) requires the disclosure of a license number or unique identifier for each person (including natural persons) identified in the table if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such person's business activities has issued a license number or other unique identifier to such person, and that person's NMLSR ID number has not already been disclosed under § 1026.38(r)(3) and (5). See comment 38(r)–4. Because § 1026.38 requires disclosures only to the extent applicable, the table is either left blank or ''N/A'' is entered for these disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier and who have not obtained an NMLSR ID to be disclosed under § 1026.38(r)(3) and (5) (see comment 38(r)–4); provided that, the creditor or closing agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. See § 1026.38(t)(2)(xii) and comment 38(r)–1.

6. *Contact.* Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under § 1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. See comments 38(r)–4 and –5. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer's name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under § 1026.38(r)(1) has a State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sale's agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, if the closing attorney employed by the closing agent disclosed under § 1026.38(r)(1) has a State-issued closing agent license number, but the consumer meets with a secretary to fill out any necessary documentation prior to the closing and to answer questions, the closing attorney's name is disclosed under § 1026.38(r)(4) since a secretary is only performing clerical functions.

38(s) Signature statement.

1. *General requirements.* See the commentary to § 1026.37(n) for guidance regarding optional signature requirements and signature lines for multiple consumers.

38(t) Form of disclosures.

38(t)(1) General requirements.

1. *Clear and conspicuous; segregation.* The clear and conspicuous standard requires that the disclosures required by § 1026.38 be legible and in a readily understandable form. The disclosures also must 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. As required by § 1026.38(t)(2), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H–25 in appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t).

2. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M.

Under § 1026.38(t)(2), creditors may not include any additional information in the disclosures required by § 1026.38. Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by § 1026.38(c) and should not, for example, reflect the other options available to the consumer at maturity.

38(t)(2) Estimated disclosures.

1. *Estimated amounts.* Although certain amounts are estimated when provided on the disclosure required by § 1026.37, many of these amounts, must be actual amounts rather than estimates in accordance with the requirements of § 1026.19(f), even though the corresponding provision of § 1026.38 cross-references a counterpart in § 1026.37. Section 1026.38(t)(2) provides that, if a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' in form H–25 in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated.'' Thus, § 1026.38(t)(2) incorporates the ''estimated'' designations reflected on form H–25 into the requirements of § 1026.38. See comment 37(o)(2)–1.

38(t)(3) Form.

1. *Non-federally related mortgage loans.* For a transaction that a non-federally related mortgage loan, the creditor is not required to use form H–25 in appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in H–25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H–25, the disclosures required by this section must be provided on letter size (8.5″ x 11″) paper.

38(t)(4) Rounding.

1. *Generally.* Consistent with § 1026.2(b)(4), any amount required to be disclosed by § 1026.38 must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, § 1026.38(t)(4) requires that the loan amount be disclosed using decimal places even if the amount of cents is zero. Accordingly, in contrast to the amounts disclosed under § 1026.37(b)(1), loan amounts disclosed pursuant to § 1026.38(b) are disclosed with decimal places even if they denote zero cents.

2. *Guidance.* For guidance regarding the requirements of § 1026.38(t)(4), see the commentary to § 1026.37(o)(4).

38(t)(5) Exceptions.

1. *Permissible changes.* The changes required and permitted by § 1026.38(t)(5) do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in § 1026.38(t)(5) or not permitted by other provisions of § 1026.38, may affect the substance, clarity, or meaningful sequence of the disclosure. Creditors making any changes that do not conform to these requirements will lose their protection from civil liability under TILA.

2. *Manual completion.* The creditor or settlement agent preparing the form is not required to use a computer, typewriter, or other word processor to complete the disclosure required by this section. The creditor or settlement may fill in information and amounts required to be disclosed by this section on form H–25 in appendix H to this part by hand printing or using any other method, provided the person produces clear and legible text and uses the formatting required by this section, including replicating bold font where required. Completion by hand or typewriter does not provide an exemption from the requirement to keep records in an electronic, machine readable format under § 1026.25.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H–25 in appendix H to this part for the contact information required by § 1026.38(r) may be altered to accommodate the information for such parties, provided that the information required by § 1026.38(o), (p), (q), (r), and (s) are disclosed on the same page as illustrated by form H–25. If the space provided on form H–25 does not allow for the disclosure of such contact and other information on the same page, an additional page may be added to provide the required contact information with an appropriate reference to the additional page.

4. *Signature lines.* Section 1026.38(t) does not restrict the addition of signature lines to the disclosure required by § 1026.38, provided any signature lines for confirmations of receipt of the disclosure appear only under the ''Confirm Receipt'' heading required by § 1026.38(s) as illustrated by form H–25 in appendix H to this part. If the number of signatures requested by the creditor for confirming receipt of the disclosure requires space for signature lines in excess of that provided on form H–25, an additional page may be added to accommodate the additional signature lines with an appropriate reference to the additional page. Such additional page should also contain the heading and statement required by § 1026.38(s) in the format provided on form H–25. Signatures for a purpose other than confirming receipt of the form may be obtained on a separate page, and consistent with § 1026.38(t)(1)(i), not on the same page as the information required by § 1026.38.

5. *Additional page.* Information required or permitted to be disclosed by § 1026.38(t)(5) on a separate page should be formatted similarly to form H–25 in appendix H to this part, so as not affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary to not affect the substance, clarity, or meaningful sequence of the disclosure.

6. Page numbers. References required by provisions of § 1026.38 to information disclosed pursuant to other provisions of the section, as illustrated on form H–25 in appendix H, may be altered to refer to the appropriate page number of the form containing such information.

38(t)(5)(iv) Line numbers (Closing Cost Details).

1. *Line numbers; Closing Cost Details.* Section 1026.38(t)(5)(iv) permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1), (2) and (3) and (g)(1), (2), (3), and (4), if necessary to allow the addition of lines to other sections that require them for the required disclosures. This provision permits creditors and settlement agents to use the space gained from deleting unused lines for additional lines to accommodate all of the costs that are required to be itemized. For example, if the only origination charge required by § 1026.38(f)(1) is points, the remaining seven lines illustrated on form H–25 in appendix H to this part may be deleted and added to the disclosure required by § 1026.38(g)(4), if seven lines in addition to those provided on form H–25 are necessary to accommodate such disclosure.

38(t)(5)(v) Additional page (Closing Cost Details).

1. *Additional page; Closing Cost Details.* Section 1026.38(t)(5)(v) permits the disclosure of the information required by § 1026.38(f), (g), and (h) over two pages, but only if form H–25 in appendix H to this part, as modified pursuant to § 1026.38(t)(5)(iv), does not accommodate all of the costs required to be disclosed on one page. If the deletion of unused lines and the addition of such lines to other sections permits the disclosures required by § 1026.38(f), (g), and (h) to fit on one page, modification pursuant to § 1026. 38(t)(5)(v) is not permissible.

2. *Separate pages for Loan Costs and Other Costs.* The modification permitted by § 1026.38(t)(5)(v) allows the information required by § 1026.38(f), (g), and (h) to be disclosed over two pages. Under this modification, the information required by § 1026.38(h) must remain on the same page as the information required by § 1026.38(g). Accordingly, the Loan Costs and Other Costs sections of form H–25 in appendix H to this part may each appear on their own page, but the Other Costs section must appear on the same page as the Total Closing Costs section. The modifications permitted by § 1026.38(t)(5)(iv) and (v) may be used in conjunction to ensure disclosure of § 1026.38(f) on one page and § 1026.38(g) and (h) on one separate page.

38(t)(5)(viii) Transaction without a seller.

1. *Calculating Cash to Close.* The modifications permitted by § 1026.38(t)(5)(viii)(C) to the table required to be disclosed by § 1026.38(i) should be factored into the calculation of the total amount required by § 1026.38(i)(9)(ii). In addition, the modifications should be factored into the disclosures required by § 1026.38(i) to be disclosed under the subheading ''Estimate,'' using the estimated amounts disclosed or used in calculating the disclosures under § 1026.37.

2. *Appraised Property Value.* The modifications permitted by § 1026.38(t)(5)(viii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and is a requirement and not considered a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified pursuant to § 1026.38(t)(5)(viii) must contain the label ''Appraised Prop. Value'' and the information required by § 1026.38(a)(3)(vii)(B).

38(t)(5)(x) Customary recitals and information.

1. *Customary recitals and information.* Section 1026.38(t)(5)(x) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred.◄

Section 1026.39—Mortgage transfer disclosures.

* * * * *

39(d) Content of required disclosures.

* * * * *

►2. Partial Payment Policy. The disclosures required by § 1026.39(d)(5) must identify whether the covered person accepts payments from the consumer that are less than the full amount due and, if so, provide a description of such policy. The disclosures required by § 1026.39(d)(5) apply only to a closed-end consumer credit transaction secured by a dwelling or real property, other than a reverse mortgage transaction subject to § 1026.33. For example, an open or closed-end consumer credit transaction secured by a principal dwelling is a mortgage loan under § 1026.39(a) and a covered person must provide the disclosures required by § 1026.39(d)(1) through (4). However, the covered person is only required to include the partial payment policy disclosure required by § 1026.39(d)(5) if the transaction is a closed-end non-reverse mortgage transaction. If the dwelling in the same transaction is not a principal dwelling (*e.g.,* it is used solely for vacation purposes), the disclosure required by § 1026.39 is not required for an open-end credit transaction, because the transaction is not secured by a principal dwelling. If the transaction that is transferred is a non-reverse mortgage closed-end consumer credit transaction secured by nonresidential real property, the transaction is a mortgage loan requiring a covered person to provide the disclosures under § 1026.39(d)(1) through (5).◄

* * * * *

►*Paragraph 39(d)(5).*

1. Format of Disclosure. Section 1026.39(d)(5) requires disclosure of the partial payment policy of covered persons for closed-end mortgage loans. A covered person may utilize the format of the disclosure illustrated by form H–25 in appendix H to this part for the information required to be disclosed by § 1026.38(l)(5). For example, the statement required § 1026.39(d)(5)(iii) that a new covered person may have a different partial payments policy may be disclosed using the language illustrated by form H–25, which states ''If this loan is sold, your new lender may have a different policy.'' The text illustrated by form H–25 may be modified to suit the format of the covered person's disclosure under § 1026.39. For example, the format illustrated by form H–25 begins with the text, ''Your lender will,'' which may not be suitable to the format of the covered person's other disclosures under § 1026.39. This text may be modified to suit the format of the covered person's integrated disclosure, using a phrase such as ''We will'' or ''We are your new lender and have a different Partial Payment Policy than your previous lender. Under our policy we will.'' Any modifications must be appropriate and not affect the substance, clarity, or meaningful sequence of the disclosure.◄

* * * * *

Appendix D—Multiple-Advance Construction Loans

* * * * *

6. Relation to § 1026.18(s). A creditor must disclose an interest rate and payment summary table for ►certain◄ transactions secured by [real property or] a dwelling, pursuant to § 1026.18(s), instead of the general payment schedule required by § 1026.18(g). Accordingly, ►some◄ home construction loans that are secured by [real property or] a dwelling are subject to § 1026.18(s) and not § 1026.18(g). ►See comment app. D–7 for a discussion of transactions that are subject to §§ 1026.37 and 1026.38.◄ 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. ►Following are illustrations of the application of appendix D to transactions subject to § 1026.18(s), under each of these two alternatives:◄

i. If a creditor uses appendix D and 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 § 1026.18(s). Under § 1026.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary 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)'' does not apply because the transaction is governed

by § 1026.18(s) rather than § 1026.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 1026.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, ►where interest is payable on the amount actually advanced for the time it is outstanding,◄ the construction phase must be disclosed pursuant to appendix D, part II.C►.1◄, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The interest rate and payment summary table disclosed under § 1026.18(s) ►in such cases◄ must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 1026.18(s) to the permanent phase only. For example, under § 1026.18(s)(2)(i)(A) or § 1026.18(s)(2)(i)(B)(1), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

►7. Relation to §§ 1026.37 and 1026.38. A creditor must disclose a projected payments table for certain transactions secured by real property, pursuant to §§ 1026.37(c) and 1026.38(c), instead of the general payment schedule required by § 1026.18(g). Accordingly, 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). See comment app. D–6 for a discussion of transactions that are subject to § 1026.18(s). 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. Following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of these two alternatives:

i. If a creditor uses appendix D and 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 §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a 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)'' does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor determines 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 is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table.

ii. 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 appendix D, part II.C.2, the projected payments table must 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 determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.◄

* * * * *

Appendix H—Closed-End [Model] Forms and Clauses

* * * * *

16. Samples H–13 through H–15. These samples illustrate various [mortgage] ►closed-end◄ transactions. ►Samples H–13 and H–15 are for transactions subject to § 1026.17(a).◄ [They assume that the mortgages are subject to the Real Estate Settlement Procedures Act (RESPA). As a result, no option regarding the itemization of the amount financed has been included in the samples, because providing the good faith estimates of settlement costs required by RESPA satisfies Truth in Lending's amount financed itemization requirement. (See § 1026.18(c).)] ►Samples H–13 and H–15 do not illustrate the requirements of § 1026.18(c) or (p) regarding the itemization of the amount financed and a reference to contract documents. See form H–2 for a model for these requirements.◄

* * * * *

19. Sample H–15. This sample illustrates a graduated payment [mortgage] ►transaction subject to § 1026.17(a)◄ with a 5-year graduation period and a 7½ percent yearly increase in payments. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($898), as well as an initial [mortgage] guarantee insurance premium of $225.00, are included in the prepaid finance charge. The [mortgage] guarantee insurance premiums are calculated on the basis of ¼ of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under § 1026.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the [mortgage] ►guarantee◄ insurance portion of the obligation.

* * * * *

Dated: July 9, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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